

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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<http://www.kslegislature.org/klrd>

January 21, 2016

DOCKING STATE OFFICE BUILDING AND ENERGY SERVICE CENTER

In 2015 SB 112 (the 2015 Appropriations Bill), the Legislature appropriated the Docking State Office Building Rehab, Repair and Razing Fund as a no limit fund. The bill gave the Department of Administration the authority to make expenditures from "available funds" to demolish the Docking State Office Building and make expenditures for related reconstruction, relocation, and renovation of the power plant. The bill further bars the Department of Administration from selling, leasing, transferring, or otherwise conveying the land on which building no. 3 (Docking State Office Building) is situated.

Despite this grant of authority, no expenditures were budgeted by the Department of Administration as part of the agency budget submission during the 2015 or 2016 Legislative Sessions. Any expenditures for this purpose will be in excess of the current Governor's Recommendation for FY 2016. In addition, there was no request for bonding authority by the Department of Administration for construction of the Energy Service Center.

Presentations from the Department of Administration Regarding Docking and Energy Service Center to Joint Committee on State Building Construction

- **January 16, 2014 – Docking State Office Building and Capital Complex Plan.** Mark McGivern provided the Department of Administration recommendation for the Docking Building. The handout provided estimates of different scenarios of construction including "do nothing." The plan was shown in phases with moving agencies from the building, building the new energy center, and demolition of the building.
- **January 23, 2014 – Response to comments from Capital Complex Plan.** The response to comments on the Capital Complex Plan handout provided the costs for partial demolition of the Docking Building to three floors, location of the proposed power plant, and lease rates.
- **March 5, 2015 – Update on Docking State Office Building and New Utility Plant by Mark McGivern and Frank Burnam.** They discussed the relocation of agencies from the Docking Building. The design of the new energy center is almost complete and a request for proposal is scheduled to close by May 10 with a contract let before June 30, 2015. Bound handout of schedule and architectural drawings were provided.

- **June 2, 2015 – Update on the proposed energy center by Secretary Clark.** Secretary Clark stated the bids for the proposed Energy Center include options; bids were received in September of 2014. A demolition contract will not be let until the Energy Center is completed.
- **October 20, 2015 – Update on the Energy Center Lease.** George Steele provided a verbal update with no handout. The project costs are much higher than first estimated, now at \$16.3 million. Final plans are delayed so the Kansas Development Finance Authority (KDFA) can bid on the project at a reduced rate. At that meeting, Representative Hutton recommended that the Department of Administration go back and reconsider the project from the beginning, including not fully deconstructing Docking, based on the increased expenses for the New Energy Service Center. The Department of Administration has not yet responded to this request. Chairman Brunk then indicated to the Department of Administration that they wanted to see the lease agreement prior to its finalization and discussed having a meeting of the Joint Committee via phone to receive the lease information and revised cost calculations. This phone conference did not occur.

Between December 21st and December 29th, the Department of Administration, the KDFA, and the Bank of America Capital Group entered into contractual relationships for the construction of a New Energy Service Center. The bond issuance to fund the construction of the Energy Service Center is 2015L and principal and interest payments are \$19.9 million over 15 years. The rent on the Energy Service Center would be paid by the Department of Administration from off budget funds, such as the State Building Operating Fund. The main revenue source of the fund is rent revenue. The Monumental Building Surcharge also is deposited in this fund. KDFA has assigned the revenue from the lease rent payments paid by the Department of Administration to Bank of America to satisfy the debt on the bond.

From: Susan Wagle tswagle@aol.com
Subject: Fwd: Energy Center Project Early Termination Costs
Date: January 23, 2016 at 9:56 AM
To: Kay Wolf kaywolf@me.com

-----Original Message-----

From: Dylan Dear <Dylan.Dear@KLRD.ks.gov>
To: 'tswagle@aol.com' <tswagle@aol.com>
Cc: JG Scott <JG.Scott@KLRD.ks.gov>; Raney Gilliland <Raney.Gilliland@KLRD.ks.gov>
Sent: Fri, Jan 22, 2016 3:45 pm
Subject: Energy Center Project Early Termination Costs

President Wagle:

Attached is memo containing an estimate for early termination of the Energy Service Center Contracts. The Legislative Research Department currently estimates that cost to be \$409,000 with an interest accrual rate of \$32,000 per month. Termination will require legislative action. We received assistance in developing this estimate from the Department of Administration Office of Chief Counsel and the Kansas Development Finance Authority.

Please feel free to contact me if you have any further questions.

Respectfully,

Dylan Dear
Managing Fiscal Analyst
Kansas Legislative Research Department
Dylan.Dear@klrd.ks.gov
785.296.0665

Costs for Early
Termination of Energy S...

begin construction 1/27/16
1 yr. completion
demo Docketing

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January 22, 2016

To: Senate President, Susan Wagle
From: Dylan Dear, Managing Fiscal Analyst
Re: Early Termination of Energy Service Center Contract Costs

President Wagle, you have inquired as to the cost of terminating the contract to build a new Energy Service Center and the included leases. There are two primary costs that will be incurred if the contract is terminated early. The first, is the financing costs in the lease agreement. The second is any expenses which McCarthy Building Companies has incurred to date on construction of the Energy Service Center. The best estimate of the cost to terminate the energy center project at this time is \$409,000, including \$334,000 in financing costs and \$75,000 construction fees, if the termination occurred today.

Regarding the financing costs in the lease agreement, Section 3.6 paragraph (a) of the Lease with Option to purchase agreement between the Kansas Development Finance Authority (KDFA) and the Department of Administration provides that the Tenant, with concurrence of KDFA, may redeem the remaining principal component at a prepayment penalty of 101 percent (all of the principal plus a 1 percent penalty) if there is a "Change of Circumstances." Change of Circumstances is defined within the agreement to mean:

"Change of Circumstances" means that (i) as a result of changes in the Constitution, or legislation adopted or imposed by the State or any political subdivision thereof, or by the United States, or any action instituted in any court, this Lease shall become void, unenforceable or impossible of performance without unreasonable delay, or in any other way, by reason of such changes of circumstances imposing unreasonable burdens or excessive liabilities upon the Tenant or (ii) Tenant shall determine it is not practicable or desirable to acquire or construct substitute improvements under the circumstances described in Sections 20.1(c) or (e) or 20.2(c) hereof."

Therefore, it would require that legislation be passed to prohibit expenditures to construct the energy service center in order to trigger the Change of Circumstances provision. KDFA has indicated that the prepayment penalty would be approximately \$334,000 as of January 22nd 2016. The State will continue to incur interest costs of \$32,100 per month until a bill prohibiting expenditures is passed.

Regarding the contract to build the Energy Service Center between the Department of Administration and McCarthy Building Companies, the contract provides in paragraph 9 that the contract may be terminated if funds are withdrawn by the Legislature. The State has agreed to provide 30 days notice of this event prior to termination. The State would have to pay for any

work already performed. McCarthy currently estimates that the costs incurred are about \$75,000; including \$30,000 for shop drawings and engineering and \$18,000 in an equipment lease. The Office of the Chief Counsel is also concerned that McCarthy may attempt to lodge a claim for lost profits.

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REVISOR of STATUTES

LEGISLATURE of THE STATE of KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: President Susan Wagle
From: Jill Wolters, First Assistant Revisor
Date: January 25, 2016
Subject: Energy Center Project

Background

Kansas Development Finance Authority (KDFA) is authorized to “lease, acquire, construct, sell and otherwise deal in and contract concerning any facilities.” [K.S.A. 2015 Supp. 74-8904(r)] Pursuant to K.S.A. 2015 Supp. 74-8904(g) KDFA has the power to “borrow money and to issue notes, bonds and other obligations pursuant to K.S.A. 2015 Supp. 74-8905.” Under the KDFA statutes, the definition of “bonds” includes “notes,” “interest in a lease” or “other evidence of indebtedness.” [K.S.A. 2015 Supp. 74-8902(f)] Pursuant to K.S.A. 2015 Supp. 74-8905(b), KDFA may issue bonds as requested by the secretary of administration, however, no bonds can be issued unless approved by “an appropriation or other act of the legislature or has been approved by the state finance council.”

Within the limits of appropriations and other funds available, the Secretary of Administration has the power to enter into leases on behalf of executive branch state agencies. [K.S.A. 75-3651(a)(4)] Pursuant to this statute, subsection (b), the Secretary is required to present an annual report on or before December 31 to the Joint Committee on State Building Construction (JCSBC) on any actions taken pursuant to this section, with a description of the action and the statutory authority authorizing such action.

Recent transactions

[The Department of Administration is the owner of Landon Site. The Landon Facilities are constructed and installed on the Landon Site.]

The Department of Administration is leasing the Landon Site to KDFA, granting a leasehold interest to KDFA in the Landon Site and buildings, Landon Facilities. Site Lease Agreement.

KDFA is leasing the Landon Facility back to the Department of Administration. Lease w/option to purchase.

KDFA entered into an Assignment with Banc of America (Assignee), assigning KDFA rights under the lease w/option to purchase to basic rent, and certain other amounts, to Banc of

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America. (see also Series 2015L) Pursuant to the assignment of the lease, Banc of America provided \$16,600,000 to be deposited in the cost issue account and the project account for the use of the energy center project.

Legal Authority

KDFA, pursuant to K.S.A. 2015 Supp. 74-8904(r), entered into the lease with the Department of Administration, who has the authority to enter into leases pursuant to K.S.A. 75-3651(a)(4). KDFA, pursuant to K.S.A. 2015 Supp. 74-8904(g) has the power to issue bonds [including interest in a lease or other evidence of indebtedness] subject to the provisions of K.S.A. 2015 Supp. 74-8905. KDFA is authorized to issue bonds for a project of a state agency upon the request of the secretary of administration pursuant to K.S.A. 2015 Supp. 74-8905(b). The secretary of administration requested KDFA issue bonds for the energy center project. Under such statutory authority, no bonds may be issued unless the project has been approved by an appropriation act or other act of the legislature or has been approved by the state finance council. KDFA issued the bonds under the secretary's authority to lease pursuant to K.S.A. 75-3651(a)(4).

It is my understanding that there is no other example of bonding by KDFA exactly like this issuance.

According to the legislative record, no action has been taken by the state finance council and no appropriation has passed the legislature which specifically authorized the Department of Administration to bond the cost of moving the Energy Center.

In addition, a memo from the Kansas Legislative Research Department reflects that on October 20, 2015, a member of the Joint Committee on Building Construction asked the Department of Administration to reconsider the project from the beginning, including not fully deconstructing Docking, based on increased expenses and cost overruns for the Energy Center.

Senator Wolf:

The Energy Service Center was supposed to break ground Monday, January 18th. I understand that has been delayed due to the weather and the plan is to break ground tomorrow on the 27th of January. It will take approximately 1 year to complete construction and prepare Docking for demolition.

Please let me know if you require any additional information.

Dylan Dear
Managing Fiscal Analyst
Kansas Legislative Research Department
Dylan.Dear@klrd.ks.gov
785.296.0665

-----Original Message-----

From: Kay Wolf
Sent: Tuesday, January 26, 2016 8:22 AM
To: Shirley Morrow; Dylan Dear
Subject: Energy center

What was the date to begin construction of the power plant and what was the estimated completion time.

Thx
Kay

From: Dylan Dear <Dylan.Dear@KLRD.ks.gov>
Date: January 26, 2016 at 11:27:44 AM CST
To: Kay Wolf <Kay.Wolf@senate.ks.gov>
Cc: Shirley Morrow <Shirley.Morrow@KLRD.ks.gov>
Subject: RE: Energy center

The money was transmitted to the State Treasurer and is being held in an account for KDFA. The lease gives KDFA the authority to invest funds held. Any investments have to conform with the Pooled Money Investment Board Statutes and the moneys need to be available for the project when needed. This means they are probably not realizing any significant returns on these investments.

Dylan Dear

-----Original Message-----

From: Kay Wolf
Sent: Tuesday, January 26, 2016 11:13 AM
To: Dylan Dear
Cc: Shirley Morrow
Subject: Re: Energy center

While waiting in construction to begin where is the money from the lease proceeds being held? Escrow?
Senator Wolf

Sent from my iPad

On Jan 26, 2016, at 9:00 AM, Dylan Dear <Dylan.Dear@KLRD.ks.gov> wrote:

Senator Wolf:

The Energy Service Center was supposed to break ground Monday, January 18th. I understand that has been delayed due to the weather and the plan is to break ground tomorrow on the 27th of January. It will take approximately 1 year to complete construction and prepare Docking for demolition.

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Dylan Dear
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Kay

DoA Energy & Facility Lease

\$16,432,166 Net Proceeds --- Final Maturity 3/15/2031

BAML Bid @ 2.32% --- Closing 12/29/15

\$16,600,000.00

Bond Balance Report

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I	Bond Balance	Fiscal Total
12/29/2015	-	-	-	-	16,600,000.00	-
03/15/2016	-	-	81,303.11	81,303.11	16,600,000.00	-
06/30/2016	-	-	-	-	16,600,000.00	81,303.11
09/15/2016	-	-	192,560.00	192,560.00	16,600,000.00	-
03/15/2017	937,914.00	2.320%	192,560.00	1,130,474.00	15,662,086.00	-
06/30/2017	-	-	-	-	15,662,086.00	1,323,034.00
09/15/2017	-	-	181,680.20	181,680.20	15,662,086.00	-
03/15/2018	959,674.00	2.320%	181,680.20	1,141,354.20	14,702,412.00	-
06/30/2018	-	-	-	-	14,702,412.00	1,323,034.40
09/15/2018	-	-	170,547.98	170,547.98	14,702,412.00	-
03/15/2019	981,938.00	2.320%	170,547.98	1,152,485.98	13,720,474.00	-
06/30/2019	-	-	-	-	13,720,474.00	1,323,033.96
09/15/2019	-	-	159,157.50	159,157.50	13,720,474.00	-
03/15/2020	1,004,719.00	2.320%	159,157.50	1,163,876.50	12,715,755.00	-
06/30/2020	-	-	-	-	12,715,755.00	1,323,034.00
09/15/2020	-	-	147,502.76	147,502.76	12,715,755.00	-
03/15/2021	1,028,029.00	2.320%	147,502.76	1,175,531.76	11,687,726.00	-
06/30/2021	-	-	-	-	11,687,726.00	1,323,034.52
09/15/2021	-	-	135,577.62	135,577.62	11,687,726.00	-
03/15/2022	1,051,879.00	2.320%	135,577.62	1,187,456.62	10,635,847.00	-
06/30/2022	-	-	-	-	10,635,847.00	1,323,034.24
09/15/2022	-	-	123,375.83	123,375.83	10,635,847.00	-
03/15/2023	1,076,283.00	2.320%	123,375.83	1,199,658.83	9,559,564.00	-
06/30/2023	-	-	-	-	9,559,564.00	1,323,034.66
09/15/2023	-	-	110,890.94	110,890.94	9,559,564.00	-
03/15/2024	1,101,252.00	2.320%	110,890.94	1,212,142.94	8,458,312.00	-
06/30/2024	-	-	-	-	8,458,312.00	1,323,033.88
09/15/2024	-	-	98,116.42	98,116.42	8,458,312.00	-
03/15/2025	1,126,801.00	2.320%	98,116.42	1,224,917.42	7,331,511.00	-
06/30/2025	-	-	-	-	7,331,511.00	1,323,033.84
09/15/2025	-	-	85,045.53	85,045.53	7,331,511.00	-
03/15/2026	1,152,943.00	2.320%	85,045.53	1,237,988.53	6,178,568.00	-
06/30/2026	-	-	-	-	6,178,568.00	1,323,034.06
09/15/2026	-	-	71,671.39	71,671.39	6,178,568.00	-
03/15/2027	1,179,691.00	2.320%	71,671.39	1,251,362.39	4,998,877.00	-
06/30/2027	-	-	-	-	4,998,877.00	1,323,033.78
09/15/2027	-	-	57,986.97	57,986.97	4,998,877.00	-
03/15/2028	1,207,060.00	2.320%	57,986.97	1,265,046.97	3,791,817.00	-
06/30/2028	-	-	-	-	3,791,817.00	1,323,033.94
09/15/2028	-	-	43,985.08	43,985.08	3,791,817.00	-
03/15/2029	1,235,064.00	2.320%	43,985.08	1,279,049.08	2,556,753.00	-
06/30/2029	-	-	-	-	2,556,753.00	1,323,034.16
09/15/2029	-	-	29,658.33	29,658.33	2,556,753.00	-
03/15/2030	1,263,717.00	2.320%	29,658.33	1,293,375.33	1,293,036.00	-

DoA Energy & Facility Lease

\$16,432,166 Net Proceeds --- Final Maturity 3/15/2031

BAML Bid @ 2.32% --- Closing 12/29/15

\$16,600,000.00

Bond Balance Report

Part 2 of 2

Date	Principal	Coupon	Interest	Total P+I	Bond Balance	Fiscal Total
06/30/2030	-	-	-	-	1,293,036.00	1,323,033.66
09/15/2030	-	-	14,999.22	14,999.22	1,293,036.00	-
03/15/2031	1,293,036.00	2.320%	14,999.22	1,308,035.22	-	-
06/30/2031	-	-	-	-	-	1,323,034.44
Total	\$16,600,000.00	-	\$3,326,814.65	\$19,926,814.65	-	-

January 29, 2016

To: President Wagle; Speaker Merrick; Representative Ryckman, Jr.; Senator Denning; Representative Hutton; Senator Wolf

From: Sarah Shipman, Acting Secretary of Administration

I appreciate the opportunity to provide you with additional information and answer your questions regarding the new Energy Center project and the possible demolition of the Docking Building.

The Department of Administration has engaged in numerous studies since 2004 to determine the correct path to take with regard to the Docking building. As you are well aware, the physical condition of the building has deteriorated and, in the opinion of the experts we relied on, the costs to rehabilitate it range from \$75 - \$100 million.

Demolishing down to three floors and remodeling and upgrading the utilities are estimated at almost \$42 million. Demolition down to a single floor, remodeling, and upgrading utilities is estimated to be \$26 million. Demolishing down to a partial floor and related utility upgrades is estimated to be \$24 million. Other options explored were determined not to be viable due to the size of the footprint and the infrastructure that would remain above ground. DOA elected for a total demolition and relocation of the energy center for \$17.7 million.

The Department of Administration has been planning for the demolition of the building and the relocation of the energy center since 2014. According to the Alvarez & Marsal study commissioned by the Legislature, DOA "seized an opportunity" to construct a new, more efficient energy center while moving state agencies into other downtown Topeka locations. This helps reduce the size and scope of state government by reducing the role of the state as a landlord. Additionally, the relocation into private buildings in downtown Topeka is good for the local economy as those buildings were previously vacant and in need of upgrades.

DOA partnered with the Kansas Development Finance Authority to secure a municipal lease to finance the construction of the Energy Center. The very favorable interest rate of 2.32% ensures stability in budgeting and DOA believes that the reduction in expenses from operating Docking, coupled with the utility savings, will cover the cost of the lease payments.

Attached please find answers to your specific questions as well as a flash drive containing all of the supporting documentation, plans, studies, etc.

Again, thank you for the opportunity to address your questions. Please let me know if I may be of further assistance.

January 29, 2016

Responses to Request for Information concerning the Energy Center Project and the financial transaction relating to Kansas Development Finance Authority (KDFA), the Department of Administration (DOA) and Bank of America for the Energy Center Project.

Dollar amounts in the narrative are approximations based on the supporting documents located on the accompanying flash drive. Specific amounts are in the documents.

Energy Center Project:

1. Please submit any plan(s), with cost estimates, for the demolition of Docking State Office Building (Docking or DSOB) and the construction of the Energy Center (including tunnels).

The cost estimate for the demolition of the Docking Building is currently \$3.5 Million. The initial bids for the demolition are included in the materials in the DSOB Demolition folder. After the initial RFP was issued, DOA located state-owned landfill space; KDOT agreed to take the concrete and reuse it as aggregate for construction projects and use the composite matter, both of which will significantly decrease the costs in the initial bids. We will have to issue a new RFP for that project as the time gets closer. The cost estimate for the construction of the Energy Center (including tunnels) is \$16,432,166. The total amount of the municipal lease is \$16,600,000 which includes closing costs. The interest rate is 2.32% on the 15-year lease. Construction plans are located in the Energy Center file. Lease documents are in the BOA file.

2. Please submit any plan(s), with cost estimates, for the deconstruction of Docking to three floors, leaving the energy center intact, renovating the remaining building for state offices.

The cost estimate for deconstruction and renovation of Docking down to three floors is \$41,972,301. See DSOB Various Options cost comparisons. The estimates are based on the current renovation of the Scott building in Topeka and have been updated to reflect actual costs as of January 2015.

3. Please submit any plan(s), with cost estimates, for the deconstruction of Docking to a small portion of the first floor, leaving the energy center intact and the basement area needed for the routing of existing piping. The first floor space would be for the Kansas Highway Patrol and other agencies that were going into the new energy center. This will require waterproofing of the existing 1st floor that will not be under a roof to protect that basement area.

A similar option was considered. However, this option was deemed not viable for a variety of reasons. Our demolition consultant advised that performing a structural demolition vs. implosion would add several months to the project duration and increase project costs \$1.5 million to \$2 million. Additionally, there is the risk of damage to both property and personnel who would remain in Docking during the project. The aesthetic appearance of the property would be far less than desirable for a parcel of property in the middle of downtown Topeka and directly across the street from our newly renovated statehouse. Finally, the dollar value of the ground itself would be negatively impacted by leaving the plant in place, forever limiting any other utilization for that property. Estimated cost to be \$24 million.

4. Please submit any plan(s), with cost estimates, for the deconstruction of Docking to one floor, leaving the energy center intact, renovating the remaining building for state offices.

We analyzed taking down to one floor. Estimated costs are \$26 million. These costs were updated as of January 2015.

5. Please submit any plan(s), with updated cost estimates, for rehabilitating Docking for occupation and continued use by state agencies.

The cost estimate for a total renovation of the Docking Building is \$83,830,857. Numerous prior studies and estimates are included in the Renovation file. The estimates are based on the current renovation of the Scott building in Topeka and have been updated to reflect actual costs as of January 2015.

6. Please provide the pro forma's that were originally presented to the JCSBC comparing points 1, 2 and 3.

Please find the information that was presented to the Committee over the course of discussion on the project. There were also visual aids in some of the meetings and capital improvement plans. See the JCSBC file.

7. Please provide a new pro forma for point 4.

We analyzed taking Docking to one floor. Estimated cost \$26 million. These costs were updated as of January 2015.

8. Please provide an updated pro-forma's for points 1, 2 and 3 reflecting the higher cost for the new energy center and lower cost to demolish Docking due to the lower cost of debris disposal.

The DSOB Various Options document contains a spreadsheet comparing costs.

The cost estimate for the demolition of the Docking Building is currently \$3.5 Million. The initial bids for the demolition are included in the materials in the DSOB Demolition folder. After the initial RFP was issued, DOA located state-owned landfill space and KDOT agreed to take the concrete and reuse it as aggregate for construction projects, both of which will significantly decrease the costs in the initial bids. We will have to issue a new RFP for that project as the time gets closer. The cost estimate for the construction of the Energy Center (including tunnels) is \$16,432,166. The total amount of the municipal lease is \$16,600,000 which

includes closing costs. The interest rate is 2.32% on the 15-year lease. Construction plans are located in the Energy Center file. Lease documents are in the BOA file.

The cost estimate for deconstruction and renovation of Docking down to three floors is \$41,972,301. See DSOB Various Options cost comparisons. The estimates are based on the current renovation of the Scott building in Topeka and have been updated to reflect actual costs as of January 2015.

We analyzed taking Docking to the ground and leaving a partial first floor. This would include the necessary waterproofing. That cost was \$24 million. These costs were updated as of January 2015.

9. Please provide a summary of DOA's concerns & advantages for 1-4.

(1) Advantages: This is the most cost effective option for the state. There is the potential sale of parking lot to the south. In 2013, DOA received a \$2.5 million dollar offer to purchase the lot directly across the street from Docking. Demolition and relocation avoids spending on an outdated, inefficient (in both equipment and layout/design) building.

(2) Deconstruction of Docking to 3 floors was evaluated. The space remaining is not functional because of the way the building was designed and constructed for the three floors to support the 11 stories above it. We will still have people occupying the building, boiler plant, chiller plant, maintenance shops, warehouse, and Kansas Highway patrol in the building while it is being demolished. This is a life safety concern. Functionally, for those operations remaining in the building it would be difficult to coordinate deliveries, maintain operations, and protect personnel during an active demolition and construction project. Most of the heating cooling and electrical system run vertically through the building and these systems will have to shut down for demolition. This would dramatically affect operations remaining in the building, as these systems will be impacted by the demolition and construction project.

Concerns:

Employee and Public Safety by continuing to occupy Docking

Potential increased costs due to delayed action on Docking

Temporary relocation of employees during renovation would be costly and disruptive to agency operations

Cost to renovate the building at three floor levels would push rent rates far above what was available in the market.

Renovation to three floors - too big for DCF and too small for Revenue

(3) Our demolition consultant advised that performing a structural demolition vs. implosion would add several months to the project duration and increase project costs \$1.5 million to \$2 million. Additionally, there is the risk of damage to both property and personnel who would remain in Docking during the project. The aesthetic appearance of the property would be far less than desirable for a parcel of property in the middle of downtown Topeka and directly across the street from our newly renovated statehouse. Finally, the dollar value of the ground itself would be negatively impacted by leaving the plant in place, forever limiting any other utilization for that property.

(4) The concerns here are similar to the above. There would be boiler stacks, boiler safety relief piping, gas meters, etc. on the site and up the side of the new spaces or out in a green space depending on the location of this new building.

10. Please provide details used by the DOA to make the determination that the building needed to be demolished.

All of the building systems have deteriorated to a point where they are in failure mode and some of them are very dangerous. There have been piping failures. Piping could again rupture spilling scalding water on unsuspecting employees and members of the public. The electrical bus duct could fail in a catastrophic form that could cause serious injury/death to occupants. The building domestic water system, heating /cooling water system, electrical distribution, air handling system, elevators, curtain wall systems, boilers, chillers, fire alarm systems, etc. all have exceeded their useful life and need to be replaced.

Outside consultants have opined since 2000 that cost to renovate the property was in the \$60-70 million range. DOA now believes the costs could be in the range from \$75 – \$100 million depending upon the final scope of work and the means and methods of construction.

Throughout the process, several well recognized real estate developers were interviewed about the feasibility of renovating the DSOB, for purposes other than state occupancies. Because of the amount of deferred maintenance, these developers were not interested even if the building was to be given to them.

DOA was confident that quality office space could be found for the agencies occupying Docking, at competitive market rates that would give these agencies budget certainty with respect to occupancy costs well into the future. See DSOB Renovation file for specific documentation.

11. Did DOA issue a RFP to have the building analyzed for costs of repair vs demolition? If so, please provide a copy of the study and any documents that outline the cost of repair vs. cost of demolition and the cost to move agencies.

DOA did not issue a new RFP for renovation of the building, however included with the information are at least four different studies on the costs to renovate the building going back to at least 2004. There was an RFP to demolish the building and the bids are included. Initial estimates will be reduced because DOA located state-owned landfill space and KDOT agreed to take the concrete and use it as aggregate in construction projects. A new RFP will be prepared and updated bids will be accepted as we get closer to the demolition. See the DSOB Renovation file for renovation studies and the DSOB Demolition file for cost estimates. DOA did not do an analysis of the cost to move agencies but utilized DOA staff and inmate labor as a low cost solution.

12. Was the building structurally sound? What was the cost of taking out asbestos? What was the cost of re-plumbing and re-wiring the building? Was the study put out for competitive bid? Did the study include the value of the underground tunnel that was just repaired or the new coolers that were just added to the energy plant? Please provide any available documentation.

Docking State Office Building is, to our knowledge, structurally sound. Structural defects could exist but may be hidden by interior finishes. The building has not been re-plumbed or re-wired. There are several studies included in the file but there has not been a new study since before 2011. However, no significant

improvements have been made since before that time either. DOA is unaware of any repairs of any recent vintage having to be made to the underground tunnel from the Statehouse to Docking. The tunnel does leak during moisture events. The cooling towers on the corner were installed in 2008. The Statehouse chillers were added to the Docking Building system in 2011. Plans are to relocate these chillers to the energy center. The three remaining chillers were installed in 1991 and have exceeded their useful life. Asbestos removal is estimated at \$1 million and is included in the demolition costs

13. Once it was determined that the building should be demolished, how was a leasing agent hired for DCF and Revenue? Was there an RFP for a leasing agent? Did the leasing agent have a contract with a state agent? Please provide copies of the contract with the leasing agent.

DOA did not engage a leasing agent but has staff dedicated to leasing services. We did issue RFPs for space. See bid tab sheets in the Lease file.

14. Please provide copies of all leases signed by state agencies that were once located in Docking.

See included lease file.

15. How does the lease rate agreed to in leases compare to the going rate for business property in the city of Topeka? When were lease rates last increased?

The Department for Children and Families initial rent rate is \$15.25 per square foot. The last five years of the lease rent will be \$18.53 per square foot. The current average comparable class A office space in Topeka is \$19.71-\$20.17 per square foot according to the CBRE Commercial Real Estate Market Report for the second quarter of calendar year 2015.

The Department of Revenue's rent ranges from \$15.50-\$15.75 per square foot. Current class B space in Topeka is \$14.89-\$14.97 per square foot per the CBRE report. However, the report assumes standard finish and the Revenue space will all be newly remodeled.

The DOA rent rate was raised to \$19.40 per square foot this fiscal year (but does include custodial).

16. What were all the ancillary costs of the move that were outside of the leasing contract? Please include costs of technology, parking, furniture, upgrades to leased facilities, leases for parking lots adjacent to new locations.

We do not currently possess the OITS costs to the agencies. Nor do we have information as to whether Revenue purchased new furniture. The DCF space was fully furnished with approximately \$1.5 million worth of Herman Miller, which was left at no cost. DCF reported that the inmate labor cost to physically move was \$4,000. There are long term parking arrangements with the City of Topeka and private property owners. The employees for DCF now park in a city owned parking garage for \$35.00 per month through April 2022 (normal rates are \$66.50). There are other reduced rates in place from 2022-2037. Revenue has parking agreements in place with monthly parking fees ranging from \$32 to \$40 per month.

17. Was the Capitol Area Plaza Authority and/or the Topeka Public Building Commission consulted on the plans for Docking and/or the energy center? If so, please provide documentation.

No.

18. Please submit any plan(s), with updated cost estimates, for the 8th street tunnel.

The 8th Street tunnel costs are included in the total project costs.

19. Please submit any plan(s), with updated cost estimates, for the current tunnel between Docking and the Statehouse.

DOA plans to abandon the Docking tunnel in place and build a wall in the statehouse so that it will no longer be accessible.

20. Please submit any identified statehouse parking garage structural risks.

The tie-in of the utility tunnels in to the Statehouse parking garage has been designed by licensed architects and structural engineers. We are not aware of any structural risks to the parking garage.

21. Please submit any documentation on an environmental audit on the land where the energy center is being constructed.

Please see the included Phase 1 environmental study. It is located in the Energy Center file.

22. Please submit any plan(s), with cost estimates, for the relocation and reuse of the chillers. Please include the plan for other buildings being provided such services during this time of relocation.

The cost to move the chillers is included in the total project cost. Cost breakdown for the project has been provided in the documentation. We are relocating two chillers out of Docking; three will remain. We have the ability to provide cooling from Landon State Office Building to the Statehouse while modifications are being made in Docking for the relocation of the equipment out of Docking.

23. Please submit any plan(s), with cost estimates, for the Kansas State historical society to move and preserve the bas relief sculpture currently on the exterior of Docking and any other historical artifacts.

We have not yet begun the discussion of the cost to move and preserve the bas relief sculptures and any other historical artifacts but will do so as the actual demolition planning stage begins.

24. Please submit any plan for a memorial for Governor Docking.

We have no plans at this time for a memorial to Governor Docking. We have been asked to preserve the bas relief sculptures and they could be incorporated into a green space or other memorial if the Legislature so desires.

25. Please submit any plan(s) for the land where Docking is currently located.

DOA has no plans for the Docking site other than to return it to green space.

26. Was this project included in the K.S.A. 75-3765 assignment of spaces for leases presented by the Secretary of Administration? If so, please provide documentation.

No.

27. Please submit any plan(s) for use of the office space in the energy center, including whether any other state agencies will be occupying the building.

The DOA maintenance and warehouse facilities and lock shop will be located in the new Energy Center. Additionally, the KHP will occupy 4,008 square feet to replace the space they occupy in DSOB.

Financial Transaction:

1. See Transcript of the Financing Documents in the BOA file.
Was the financing bonded or debt financed with a convention bank loan?

Neither. The project is financed with proceeds of a lease financing obligation (municipal lease) directly placed with Bank of America which provided the winning bid of 2.32% in response to a Request for Quotations for Direct Placement of a Municipal Lease distributed by KDFA. There were four bids for the transaction.

- a. Any repayments capitalized?
No

- b. Are the proceeds in a separate account? Escrow fashion to be used draws against the construction costs?

Yes, the lease obligation proceeds are in a project account to be drawn down per the construction schedule.

- c. Has any of the loan proceeds been used to fund any operations, directly or indirectly, not associated with the power plant project? Even for working capital for state operations?

No

- d. If Bonded. Are the bonds callable or non-callable?

No bonds were issued; the Lease may be terminated upon declaration of a Change in Circumstances as defined in the Lease to include adoption of legislation directing termination. BOA may be willing to negotiate a lease termination upon payment of a penalty fee, estimated to cost perhaps 2 – 3% of the \$16.6 million lease obligation proceeds.

- e. Terms of callable? Fee to call the bonds?

Again, this is a lease transaction; however, there is also a prepayment option at 101% on March 15, 2023.

- f. If conventional loan, is there a pre-payment penalty? If yes, what is it.

See above

- g. Walk through the logic of the leasing assignment audit trail.

The lease/lease-back structure with an assignment of security interest is a commonly used and well-accepted government lease transaction structure.

- h. Reciprocating leases, why?

Same answer: this is a traditional lease finance structure commonly used by state governments and municipalities

- i. The higher rents being charged across the state enterprise in general going forward, will this be enough to pay any debt service without additional appropriations from SGF?

It is not anticipated that the debt service for this project would impact rent rates through at least 2019; after that a re-evaluation will occur taking into account expected energy cost savings, total square footage rented and other relevant factors.

- j. Did the agency have the authority to put up a state asset (building) as collateral without legislative approval?

Yes, pursuant to K.S.A. 75-3651

- k. Why necessary? Lower interest rate?

At the lender's request to support the financing. We may have the option to switch the collateral from the Landon building to the energy center once it is constructed.

- l. Did Bank of America book the credit facility (loan/bond) as a lease on their books?

Yes, they characterize it as a capital lease.

- m. If yes, are they depreciating the collateral on their books?

No.

2. Please specify the legislative authority of the Secretary of Administration to authorize a financial transaction such as this. Please include the rationale for any conclusions.

K.S.A. 75-3762 provides that the Secretary of Administration shall have the charge, care, management and control of the property. 2014 SB 423 authorized the Secretary of Administration to sell certain real estate, and appropriated money and established a fund to be used for demolition of the Docking State Office Building and related reconstruction, relocation and renovation of the power plant. K.S.A. 75-

3561 establishes the Secretary of Administration's authority to make contracts related to the Landon State Office Building.

3. Please explain how is this transaction not pledging credit of the state pursuant to K.S.A. 75- 3651(a)(8).

The lease is a subject to appropriation lease obligation, payable solely from appropriations made to the Department of Administration. The lease is a special limited obligation of DOA and KDFA, and the credit of the State is not pledged. The KDFA Resolution specifically states that the "the Lease and the Rental Payments shall be limited obligations of the DOA payable out of current operating expenditures subject to annual appropriation by the State Legislature...Neither the Lease nor any portion of the Rental Payments payable thereunder shall constitute a debt or liability of the State or any political subdivision of the State of Kansas or an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction."

4. Please provide details of the selection of Bank of America as the financier for this transaction.

At the request of the Secretary of Administration to finance a lease transaction, KDFA issued a Request for Quotation for a Bank Direct Purchase of Municipal Lease Obligation. Bids from 23 firms were solicited; Four bids were received and Bank of America Merrill Lynch (BAML) submitted the winning bid of 2.32% with Commerce Bank (2.68%), Wells Fargo (2.71%) and Capital One (3.09%) composing the remaining bids.

5. Please provide the details of the funding source for the basic rent payments.

DOA has pledged to make lease payments from the annual appropriations it receives. This includes the rent received from tenant agencies.

6. Please explain why this wasn't a typical bond issuance that was offered in the open market.

A lease transaction was determined to be the most cost efficient, in part because bond issues sold pursuant to a public sale must go through an extensive regulated public disclosure offering and documentation process which is lengthy and expensive. Publicly sold bonds are subject to extensive regulation throughout the life of the bonds including costly annual continuing disclosure information submissions. KDFA estimates that the all-in cost of a public sale would have resulted in a financing rate of 2.60% which would cost DOA approximately \$225,000 more than the privately placed lease.

7. Please explain, pursuant to K.S.A. 2015 Supp. 74-8905(b), the specific "act of the legislature" that KDFA relied on when requested by the Secretary of Administration to issue the financial transaction.

K.S.A. 75-3762 provides that the Secretary of Administration shall have the charge, care, management and control of the property. 2014 SB 423 authorized the Secretary of Administration to sell certain real estate, and appropriated money and established a fund to be used for demolition of the Docking State Office Building and related reconstruction, relocation and renovation of the power plant. K.S.A. 75-3561 establishes the Secretary of Administration's authority to make contracts related to the Landon State Office Building.

Attorneys from Bryan Cave and Chapman & Cutler were engaged as a part of the transaction and confirmed the authority of the Secretary of Administration and KDFA to act in their respective capacities. Bryan Cave's approving opinion as transaction and special tax counsel is included in the transcript. Additionally, attorneys for Gilmore & Bell, while not officially engaged, reviewed the legal analysis for statutory authority as well.

8. Please provide an estimated cost to the State for issuing a stop work order.

DOA does not have an official estimate for the stop work order but were told it costs between \$8,000-\$20,000 per day they are scheduled to work but do not. Depending on the length of the delay, McCarthy will incur expenses and will be entitled to recover those as well as being granted an extension of time to complete the project.

9. Please provide an estimated cost to the State if the energy center contract is canceled.

As of January 22, 2016, McCarthy estimated that they had spent \$75,000. That number has risen as work was continuing until January 27. Additionally the State would owe expected profits to McCarthy and its subcontractors. That amount is unknown. Please also see the answer to 10 below.

10. Please provide an estimated cost to the State to prepay Bank of America.

The lease has an option to prepay on March 15, 2023 with a premium of 1% on the principal amount then outstanding. In the event of a "Change of Circumstances" which would basically involve an act of the Legislature, the lease could be terminated at any time with a premium of 1% on the principal amount then outstanding plus accrued interest. Finally, KDFA, if directed, could seek to negotiate a lease termination with BAML, estimated to cost a premium of 2 – 3% of the \$16.6M lease obligation amount.

11. Pursuant to K.S.A. 75-3717b, whenever a state agency proposes a capital improvement project for the construction of a building, such state agency shall prepare a capital improvement budget estimate to be submitted to the division of the budget. Please provide the written program statement describing the project, including: (A) A detailed justification for the project including an analysis of the programs, activities and other needs and intended uses for the additional or improved space and an analysis of the alternative means by which such space needs and uses could be satisfied; (B) the request for appropriations for the project in the three phases of preliminary planning, final planning and construction; (C) the description, in detail, of each such phase of the project; and (D) the cost estimates for land, site surveys, soil investigations, equipment, buildings or major repairs or improvements to buildings and other items necessary for the project. Further, please provide a copy of the minutes of the joint committee on state building construction citing this information was provided.

Please see the handout for the Committee meeting on January 16, 2014 and the resulting Minutes in the JCSBC file. Additionally, Division of the Budget was briefed and kept up to date throughout the planning phases and ahead of the final closing.

12. Please provide any other examples of bonding by KDFA similar to this instance.

The majority of KDFA bond issues to finance State buildings or projects prior to about 2003 included an underlying lease arrangement. Recent financings that are secured by a State lease include:
Curtis State Office Building (State lease is the security for Topeka Public Building Commission Bonds)
KBI Lab (State lease is the security for Topeka Public Building Commission Bonds)
Department of Agriculture Manhattan Office (State lease is the security for KDFA Bonds issued on behalf of K-State Foundation)
Eisenhower (State lease was the original security for Topeka Public Building Commission Bonds; refunded with KDFA Bonds)
Multiple energy conservation improvements for State buildings and Board of Regents institutions are secured with underlying lease finance arrangements.

13. How are the funds from the transaction allocated?

Lease Obligation proceeds were deposited into a DOA Energy Center Project Account held by the State Treasurer.

14. Under what statutory authority is Landon State Office Building being used as collateral?

K.S.A. 75-3651

15. Why did DOA not adhere to the committee's request to reappear before the committee?

The Secretary of Administration was unaware that the Joint Committee on State Buildings and Construction had requested that DOA return prior to finalizing documents. DOA presented the project cost, that financing was being secured with KDFA, and the expected interest rate. Additionally the Committee adopted the Five-Year Capital Improvement Plan which included the demolition of Docking. Senior DOA staff reported that the Committee had requested that DOA not proceed with leases in Chanute and return to the Committee with more options. All of these items are in the official minutes of the meeting as approved on December 14, 2015 and located on the Committee website. There is no mention of a return in the minutes, but there is a suggestion that the demolition to three floors be revisited. DOA is complying with the request regarding Chanute. A copy of the minutes is included in the JCSBC file.

1/29/2016	Square Footage	\$/SF	Docking to Ground	Square Footage	Docking to Partial Grnd Fl.	Square Footage	Docking to First Fl.	\$/SF	Docking to 3rd Floor	Docking Total Renovation	Docking Demo Energy Center
Asbestos Abatement	557,766		1,000,000		1,000,000		1,000,000		1,000,000	1,000,000	1,000,000
Demolition of Docking	286,697		3,500,000		3,500,000		3,500,000		3,500,000	0	2,500,000
Renovation of Sub-Basement	45,140	40	1,805,600	45,140	1,805,600	45,140	1,805,600		1,805,600	1,805,600	
Renovation of Basement	72,129	80	5,770,320	72,129	5,770,320	72,129	5,770,320	80	5,770,320	5,770,320	
First Floor	43,964	92	0	23,432	2,155,744	43,964	4,044,688	92	4,044,688	4,044,688	
Second Floor	54,918	92	0					92	5,052,456	5,052,456	
Third Floor	54,918	92	0					92	5,052,456	5,052,456	
4th Floor	31,304	92	0						0	2,879,968	
5th Floor	31,304	92	0						0	2,879,968	
6th Floor	31,304	92	0						0	2,879,968	
7th Floor	31,304	92	0						0	2,879,968	
8th Floor	31,304	92	0						0	2,879,968	
9th Floor	31,304	92	0						0	2,879,968	
10th Floor	31,304	92	0						0	2,879,968	
11th Floor	31,304	92	0						0	2,879,968	
12th Floor	15,585	92	0						0	1,433,820	
13th Floor	4,856	92	0						0	446,752	
14th Floor	4,870	92	0						0	448,040	
Energy Center	31,467	267									16,895,924
Central Energy Central Equip			2,400,000		2,400,000		2,400,000		2,400,000	2,400,000	
Curtain Wall replacement		0	0	1	1,047,693	1	1,047,693	3	2,881,156	11	11,524,624
Elevator Replacement		2	651,974	3	768,398	3	768,398	4	1,792,928	14	3,585,855
Busduct Replacement		2	636,364	3	954,545	3	954,545	4	1,272,727	11	3,500,000
Owner Finish Best and Final											(96,664)
Construction Amount			15,764,257		19,402,300		21,291,244		34,572,331	69,104,355	20,239,741
Tenant Relocation - Out/ Back In			150,000		150,000		150,000		150,000		included
AE Fees	7.5%		1,182,319		1,455,173		1,596,843		2,592,925	5,182,827	469,445
OITS Connection Costs		300	35,181		42,210		48,370		162,641	410,109	included
Project Contingency	10%		1,576,426		1,940,230		2,129,124		3,457,233	6,910,436	
Miscellaneous	3%		472,928		582,069		638,737		1,037,170	2,073,131	
Total			19,181,111		23,571,982		25,854,319		41,972,301	83,830,857	20,709,186
Possible Land Resale											(3,000,000)
											17,709,186
			"1/1000 SF"		"1/1000 SF"		"1/1000 SF"		"1/500 SF"	"1/400 SF"	
Data Connection Estimate			117		141		161		542	1,367	
Already incurred \$603,320 in the design of the Energy Service Center									Actual	1,320	

Carol DeVault

From: thaine hoffman <thainehoffman@sbcglobal.net>
Sent: Monday, February 01, 2016 1:28 PM
To: Kay Wolf; Steve Brunk; Marci Francisco; Laura Kelly; Forrest Knox; Larry Powell; John Alcala; stephen.alford@house.ks.gov; Mark Hutton; Jim Ward
Cc: Mark.Dapp@kIrd.ks.gov
Subject: Docking building, New power plant

Chair and members of the Joint Committee on State Building Construction,

I was the State Architect/Director of Architectural Services under Governor Graves (1995-2003). I worked closely with Senators Vidricksen & Morris, Representative Phil (Big Phil) Kline and your committee. At that time my responsibility included all state buildings EXCEPT the Capital Complex. However I was brought in for special projects such as remodeling Cedar Crest, the construction of the Curtis building and the installation of Ad Astra. I do not have a great deal of knowledge on Docking, although I did do a study of the cost to remodel it. I saw no reasons why it could not be successfully renovated.

Governor Graves tried to consolidate all state offices into the Capital Complex in order to provide easier access for those visiting the various state services and increase the efficiency and synergy of the state offices. Now, in order to please his landlord supporters, this governor wants to scatter them out again. Can we expect a future governor to need to consolidate the offices again?

I do not follow the news closely so my figures are general, but the Governor says that since it would only cost \$20 million to raise the building and \$60 million to renovate it, it saves money to raise it. What kind of logic is that? It totally ignores the cost of renting space for the displaced offices forever. Also, I assume that \$20 million did not include the cost to construct the new power plant.

The existing power plant includes a new cooling tower at 10th and Topeka that is only a few years old.

There are times when it is more economical to raise a building, but that should only be done after a totally objective analysis. I see nothing objective about the current administrations decisions.

I encourage you to carefully consider the need for the new power plant and the need to raise rather than renovate the Docking Building.

Thank you for your consideration. Having testified to your committee many times, I certainly appreciate the work you do.

Thaine Hoffman

2015R24735

**SHAWNEE COUNTY, KANSAS
REGISTER OF DEEDS
REBECCA J. NIOCE
DATE RECORDED:
12/29/2015 11:34:46 AM
DEBT: 0.00**

Kansas Secured Title
SNC41677

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SERIES 2015L**

BY AND BETWEEN

KANSAS DEVELOPMENT FINANCE AUTHORITY

AND

STATE OF KANSAS - DEPARTMENT OF ADMINISTRATION

DATED DECEMBER 29, 2015

LEASE WITH OPTION TO PURCHASE

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**LEASE WITH OPTION TO PURCHASE
SERIES 2015L**

THIS LEASE WITH OPTION TO PURCHASE, SERIES 2015L (the "**Lease**"), is made and entered into as of the 29th day of December, 2015 by and between the Kansas Development Finance Authority, a public body politic and corporate, with corporate succession and an independent instrumentality of the State of Kansas exercising essential public functions (the "**Authority**") and the State of Kansas - Department of Administration (the "**Tenant**").

WITNESSETH:

WHEREAS, pursuant to K.S.A. 74-8901 *et seq.* (the "**Act**") the Authority is authorized and empowered to enter into leases and to acquire, construct, sell and otherwise deal in and contract and provide for activities and projects of State agencies as requested by the Secretary of Administration of the State of Kansas (the "**Secretary**") provided such activities or projects have been approved by an appropriation or other act of the State Legislature or approved by the State Finance Council; and

WHEREAS, the Secretary is authorized pursuant to K.S.A. 75-3651 to make contracts and enter into leases on behalf of executive branch state agencies and to do all things necessary or convenient to carry out the powers granted to the Secretary; and

WHEREAS, the Authority has received a request by the Secretary of Administration to finance the cost of expenditures for capital improvements to provide a new energy service center for certain of the State's offices and administrative buildings including the Landon State Office Building at 900 S.W. Jackson Street and for the State Capitol Building (collectively, the "**Capitol Complex**") in Topeka, Kansas (the "**Energy Center Project**"); and

WHEREAS, in order to finance the costs of the Energy Center Project, the Authority will enter into this Lease with respect to the Landon Facilities (herein defined) and by assignment of its rights and interests hereunder and in particular to payments of Basic Rent hereunder to the assignee named herein (the "**Assignee**") provide funds to pay the cost of acquisition, construction, installation and equipping of the Energy Center Project; provided, however, no revenues derived from the leasing of space in the Landon Facilities shall be used in a manner inconsistent with applicable provisions of K.S.A. 75-3650, and related authorities; and

WHEREAS, the Authority further finds and determines that it is necessary and desirable, in connection with the financing of the Energy Center Project, to enter into a Site Lease Agreement dated December 29, 2015 (the "**Site Lease**") and this Lease, pursuant to which the Authority shall cause the Energy Center Project to be acquired, constructed and installed and paid for with proceeds of the assignment of the Authority's rights and interests hereunder to the Assignee and pursuant to which the Authority shall lease the Authority's rights and interests in the real property described on Schedule I hereto (the "**Landon Site**") and the existing buildings, structures and improvements thereon acquired under the Site Lease (collectively with the Landon Site, the "**Landon Facilities**") to the Tenant, in consideration of rental payments which, subject

to annual appropriation of funds to make such rental payments and other charges provided for in the Lease, are intended to be sufficient to provide for the payment of the Rental Payments (as herein defined) hereunder, including Basic Rent composed of a principal component and an interest component, and any other fees and expenses of the Tenant and the Authority as the same become due.

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

ARTICLE I

DEFINITIONS, REPRESENTATIONS AND COVENANTS

Section 1.1. Definitions. In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used herein shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Additional Rent" means all fees, charges and expenses of the Authority, all Impositions and all other expenses of whatever nature which Tenant has agreed to pay or assume, subject to annual appropriation by the Legislature of the State, under the provisions of this Lease and all expenses and costs incurred by the Authority in connection with the enforcement of any rights under this Lease. The fees, charges and expenses of the Authority shall include, without limitation, all costs incurred in connection with the execution and delivery of and performance of its obligations under the Site Lease, the Lease and the Assignment and any amount to provide for the payment of all required rebate amounts to the United States in accordance with the Code.

"Additional Term" shall mean any extended term of this Lease commencing on the last day of the Basic Term and terminating not later than the payment or provision for the payment of all of the Rental Payments.

"Annual Depreciation and Maintenance Requirement" means \$161,000.00 annually as described in Section 3.2.

"Annual Revenue Requirement" means for any Fiscal Year an amount equal to (i) the Principal Component of Basic Rent due and payable for the Fiscal Year, plus (ii) the Interest Component of Basic Rent due and payable for the Fiscal Year, plus (iii) the amount, if any, needed to be deposited into the Rebate Account to make up any deficiencies therein during such Fiscal Year, as projected by the Authority, plus (iv) the amount to be deposited into the Depreciation and Maintenance Account, as projected by the Authority, plus (v) the Authority's fees and expenses for such Fiscal Year as projected by the Authority, plus (vi) the amount of administrative expenses, if any, for such Fiscal Year as projected by the Authority, less (vii) any amounts on deposit in the Principal and Interest Account.

"Assigned Rights" shall have the meaning set forth in the Assignment.

"Assignee" means Banc of America Public Capital Corp, its successors and permitted assigns.

"Assignment" means the Assignment dated December 29, 2015 between the Authority and the Assignee with respect to the assignment and transfer of the Assigned Rights.

"Authorized Tenant Representative" means the Secretary of Administration of the State of Kansas, or such other person at the time designated to act on behalf of the Tenant as evidenced by written certificate furnished to the Authority containing the specimen signature of such person and signed on behalf of the Tenant by the Secretary. Such certificates may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Tenant Representative.

"Basic Rent" means the amount, when added to Basic Rent Credits, which is sufficient to pay, on each Basic Rent Payment Date, amounts representing the Principal Component and the Interest Component, which is due and payable on such Basic Rent Payment Date, subject to annual appropriation by the Legislature of the State, as set forth on Schedule III attached hereto.

"Basic Rent Credits" means all funds on deposit in the Principal and Interest Account and available for the payment of Basic Rent hereunder on any Basic Rent Payment Date.

"Basic Rent Payment Date" means each date specified on Schedule III attached hereto for the payment of Basic Rent.

"Basic Term" means that term commencing as of the date of this Lease and ending on March 15, 2031, subject to prior termination as specified in this Lease, but to continue thereafter until all of the Rental Payments shall have been paid in full or provision made therefor in accordance with the provisions of this Lease.

"Blanket Insurance Policy" means the insurance coverage maintained on certain assets of the Tenant, including the Landon Facilities, which shall be maintained in an amount of not less than \$200,000,000 with a deductible of not more than \$5,000,000.

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

"Change of Circumstances" means that (i) as a result of changes in the Constitution, or legislation adopted or imposed by the State or any political subdivision thereof, or by the United States, or any action instituted in any court, this Lease shall become void, unenforceable or impossible of performance without unreasonable delay, or in any other way, by reason of such changes of circumstances imposing unreasonable burdens or excessive liabilities upon the Tenant or (ii) Tenant shall determine it is not practicable or desirable to acquire or construct substitute improvements under the circumstances described in Sections 20.1(c) or (c) or 20.2(c) hereof.

"Code" means the Internal Revenue Code of 1986, as amended, including when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any successor provisions to the provisions of the Code and those regulations and any official rulings,

announcements, notices, procedures and judicial determinations under the foregoing applicable to the Lease.

"Completion Certificate" shall mean the certificate of the Tenant described in Section 6.4(e) of this Lease.

"Completion Date" means the date of completion of the Energy Center Project established as such pursuant to Section 6.4(e) of this Lease.

"Contract Rate" means 2.32% per annum.

"Costs of Issuance" means any and all expenses of whatever nature incurred in connection with the placement, execution and delivery of the Lease, the Site Lease and the Assignment.

"Costs of Issuance Account" means the account referred to by such name authorized and established pursuant to Section 5.1 hereof.

"Depreciation and Maintenance Account" means the account referred to by such name authorized and established pursuant to Section 5.1 hereof.

"Environmental Law" means any federal, State or local law (including common law), statute, regulation, ordinance, order, decree, restriction or requirement relating to health, safety or the environment (including natural resources) presently in effect or coming into effect during the term of this Lease.

"Event of Default" with respect to this Lease means any one of the following events:

(a) Failure of Tenant to make any payment of Basic Rent at the times and in the amounts required hereunder; or

(b) Failure of Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder; or

(c) 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 or such longer period as the Authority may grant to correct such default, after the Authority has given the Tenant written notice specifying such failure; provided that (i) Tenant has commenced such correction within said 30-day, or longer, period, and (ii) Tenant diligently prosecutes such correction to completion; or

(d) Any statement, representation or warranty made by Tenant in or pursuant to this Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made; or

(e) Any bankruptcy, insolvency, moratorium or similar proceeding of any character shall be instituted by the Authority or the Tenant.

"Event of Non-Appropriation" means that not later than the first day of any Fiscal Year, the State Legislature has not appropriated sufficient funds for the Tenant's Rental Payments as required pursuant to the terms and conditions of this Lease, and the lack of any other legally available funds of the Tenant to meet its obligations under this Lease.

"Event of Taxability" means the circumstance of the Interest Component paid or payable pursuant to this Lease becoming includible for federal income tax purposes in an owner's gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of the Tenant. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by the Authority, the Tenant or the Assignee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the Interest Component is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the Interest Component is includable in the gross income of the owner thereof; or (c) receipt by the Authority, the Tenant or the Assignee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by the Tenant and acceptable to the Authority, to the effect that the Interest Component has become includable in the gross income of the owner thereof for federal income tax purposes. For all purposes of this Lease, an Event of Taxability shall be deemed to occur on the date as of which the Interest Component is deemed includable in the gross income of the owner thereof for federal income tax purposes.

"Fiscal Year" means the period commencing July 1 of any year and ending on June 30 of the following year, and numbered for the year in which it ends.

"Government Obligations" means obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America.

"Governmental Unit" means a state or political subdivision or agency or instrumentality thereof.

"Hazardous Substances" means all materials, wastes, products and substances regulated as hazardous, toxic, harmful or as a pollutant under any Environmental Law, including asbestos, lead, natural gas, petroleum (including crude oil and any fraction thereof) and all substances defined as "hazardous" under 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 Landon Facilities or any part thereof, or upon the Authority's 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 Authority's or the Tenant's interest in the Landon Facilities.

"Interest Component" means the portions of the Basic Rent identified as such on Schedule III attached hereto.

"Net Proceeds" means, when used with respect to any insurance or condemnation award with respect to the Landon Facilities, the proceeds from the insurance or condemnation award remaining after the payment of all expenses of whatever nature incurred in the collection of such proceeds.

"Notice Address" shall mean:

- (1) With respect to the Tenant:

STATE OF KANSAS
Department of Administration
State Capitol Building, Second Floor
Topeka, Kansas 66612
Attn: Secretary of Administration

with a copy to:

Department of Administration
Legal Section
900 S.W. Jackson, Room 107
Topeka, Kansas 66612
Attn: Chief Attorney

- (2) With respect to the Authority:

KANSAS DEVELOPMENT FINANCE AUTHORITY
345 S. Kansas Avenue, Suite 800
Topeka, Kansas 66603
Attn: General Counsel

- (3) With respect to the Assignee:

BANC OF AMERICA PUBLIC CAPITAL CORP
11333 McCormick Road
Mail Road: MD5-03-07-05
Hunt Valley, Maryland 21031
Attn: Terri Preston, Vice President

"Notice Representative" means:

- (1) With respect to the Tenant, Secretary of Administration.

- (2) With respect to the Authority, the President thereof.
- (3) With respect to the Assignee, Terri Preston, Vice President.

"Principal Component" means the portions of the Basic Rent identified as such on Schedule III attached hereto.

"Principal and Interest Account" means the account referred to by such name authorized and established pursuant to Section 5.1 hereof.

"Project" or "Energy Center Project" means the acquisition, construction and installation of the Energy Center Facilities as described in the recitals hereto and as further identified in the legal description of the Project Site.

"Project Account" means the account referred to by such name authorized and established pursuant to Section 5.1 hereof.

"Project Costs" means those costs incurred in connection with the Project, including:

- (a) all costs and expenses necessary or incident to the acquisition, construction and installation of the Energy Center Project, including any interest expense incurred during the period of construction of the Energy Center Project;
- (b) all administration costs and expenses of the Project, and all costs and expenses of every nature incurred in the completion of the Energy Center Project under the Lease; and
- (c) Costs of Issuance.

"Project Site" means the real property described in Schedule II hereto.

"Rebate Account" means the account referred to by such name authorized and established pursuant to Section 5.1 hereof.

"Rental Payments" means the aggregate of the Basic Rent and Additional Rent payments provided for pursuant to Article III of this Lease.

"Resolution" means the resolution adopted by the Authority authorizing the Authority to execute, enter into and deliver the Site Lease, this Lease and the Assignment, as amended and supplemented and any supplemental resolutions.

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

"Site Lease" means the Site Lease Agreement dated as of December 29, 2015, by and between DOA, as lessor, and the Authority, as lessee.

"State" means the state of Kansas.

"State Legislature" means the Kansas State Legislature.

"Taxable Rate" means 3.62% per annum.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine gender. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(b) 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.

(c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision.

(d) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

Section 1.3. Representations and Covenants by Tenant. Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) Tenant will not make, or cause or permit to be made, any use of the proceeds of the Assignment or the Landon Facilities or the Energy Center Facilities which would cause the Lease to be an "arbitrage bond" within the meaning of the Code. Tenant will comply with, and will take all action reasonably required to insure that the Authority complies with, all applicable requirements of the Code until all Basic Rent has been paid.

(b) Subject to the provisions of Article IV hereof, Tenant has the right, power and authority, to enter into this Lease, and to perform its obligations hereunder.

(c) Neither the execution or delivery of this Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes any provisions or conflicts with or results in a 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 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 whatsoever upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates 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 in accordance with its terms.

(e) Tenant will request of the Governor and the Legislature of the State annual appropriations necessary for the purpose of providing funds to make the Rental Payments and to fulfill any other obligations of the Tenant under the Lease.

(f) Tenant will furnish to the Authority prior to delivery of the Assignment, all information requested by the Authority necessary for Authority to comply with the Code, including any required information to complete Internal Revenue Service Form 8038-G with respect to the Lease.

(g) Tenant will pay all required rebate amounts to the United States in accordance with Code Section 148(f) and the Arbitrage Instructions.

(h) Not more than 10% of the proceeds of the Assignment will be used directly or indirectly in a trade or business carried on by any person other than a Governmental Unit. Tenant understands that use of the Landon Facilities or the Energy Center Facilities financed with Assignment proceeds may be treated as use of such proceeds.

(i) Not more than 5% of the Assignment proceeds will be used (a) for any private business not related to a governmental use of such proceeds, or (b) in an amount disproportionate to a related governmental use of such proceeds.

(j) The Tenant hereby agrees to provide to the Authority all information of the Tenant necessary for compliance with the provisions of any rules or regulations of federal or state securities laws which may be or become applicable to this Lease or the Assignment. The Authority, upon receipt of any such information from the Tenant, will disseminate said information in accordance with the applicable rule or regulation.

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

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which the Tenant has been a party at any time has been terminated by the Tenant as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which the Tenant has issued during the past ten (10) years.

Section 1.4. Representations and Covenants by Authority. Authority makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Authority is public body politic and corporate and an independent instrumentality of the State of Kansas. Under the provisions of the Act, Authority has the power to enter into and perform the transactions contemplated by this Lease and the Resolution and to carry out its obligations hereunder.

(b) Authority 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 Landon Facilities, except as is provided for in this Lease and the Assignment.

(c) Authority, during the Basic Term or any Additional Term, will not 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 Energy Center Project (to the extent the same would adversely affect the tax-exempt status of the Interest Component) or the Landon Facilities, except as is provided for in this Lease and the Assignment.

(d) Authority has duly authorized the execution and delivery of this Lease and the Site Lease and the execution and delivery of the Assignment.

(e) Authority will not make, or cause or permit to be made, any use of the proceeds of the Assignment which would cause this Lease to be an "arbitrage bond" within the meaning of the Code. Authority will comply with, and will take all actions reasonably required to insure that the Tenant complies with, all applicable requirements of the Code until all Basic Rent shall have been paid.

(f) Authority will file (upon receipt from Tenant of all information necessary) a completed Internal Revenue Service Form 8038-G with respect to the Lease.

(g) The Authority will comply with all the limitations and requirements of the Code with respect to the Lease and the proceeds of the Assignment.

(h) Not more than 10% of the proceeds of the Assignment will be used directly or indirectly in the trade or business carried on by any person other than a Governmental Unit. Authority understands that use of the Landon Facilities or the Energy Center Facilities financed with Assignment proceeds may be treated as use of such proceeds.

(i) Not more than 5% of the Assignment proceeds will be used (a) for any private business not related to a governmental use of such proceeds, or (b) in an amount disproportionate to a related governmental use of such proceeds.

ARTICLE II

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

Section 2.2. Termination of Lease. The Lease will terminate upon the occurrence of the following:

(a) The Tenant shall have paid to the Authority all amounts which the Tenant is obligated under the terms of the Lease to pay and the Tenant shall have made arrangements which, in the opinion of the Authority, are adequate to comply with the Tenant's obligations to make any rebates to the United States of America; or

(b) The Tenant shall exercise its option to purchase in accordance with **Article XIX** hereof.

ARTICLE III

Section 3.1. Basic Rent. Authority reserves and Tenant covenants and agrees to pay or cause to be paid to the Authority, during the Basic Term, on each Basic Rent Payment Date, Basic Rent in immediately available funds, subject, however, to annual appropriation of funds by the Kansas Legislature for said Basic Rent, provided, however, the Authority and Tenant acknowledge and agree that no revenues derived from the leasing of space in the Landon Facilities shall be used in a manner inconsistent with applicable provisions of K.S.A. 75-3650, and related authorities; provided further, however, that the Authority and Tenant agree that neither funds appropriated by the State pursuant to the terms hereof, nor amounts received by the Authority pursuant to the terms hereof, including in the exercise by the Authority of its remedies hereunder, constitute "revenues derived from the leasing of space in the Landon Facilities" and, further, that the provisions hereof and the transactions contemplated hereby to not conflict with or contravene the provisions of K.S.A. 75-3650 and related authorities. Authority and Tenant acknowledge and agree that, as set forth on **Schedule III**, a portion of each Basic Rent payment is paid as, and represents payment of, interest, and the balance of each such Basic Rent payment is paid as, and represents principal. Upon the occurrence of an Event of Taxability, the Interest Component shall have accrued and be payable thereafter at the Taxable Rate retroactive to the date as of which the Interest Component is determined to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and the Tenant shall pay such additional amount (including additions to tax, interest and penalties) as will result in the owner receiving the Interest Component at the Taxable Rate.

The Tenant shall pay the Authority a charge on any Basic Rent not paid within ten (10) days after the date such payment is due at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* 5% per annum or the maximum amount permitted by law, whichever is less, from such date until paid.

Section 3.2. Additional Rent; Annual Payment to Depreciation and Maintenance Account. In addition to Basic Rent, Tenant shall pay any Additional Rent required to be paid pursuant to this Lease, within fourteen (14) days after receipt of written notice and demand therefor.

Tenant further covenants and agrees to make annual deposits to the Depreciation and Maintenance Account on or prior to March 15 of each year, commencing on March 15, 2017, in

the amount of not less than the Annual Depreciation and Maintenance Requirement. Funds on deposit in the Depreciation and Maintenance Account shall be used solely by Tenant to pay costs of usual and unusual or extraordinary repairs and replacements to the Energy Center Facilities. Funds on deposit in the Depreciation and Maintenance account shall not be available to pay Basic Rent in the event that funds on deposit in the Principal and Interest Account shall be insufficient for the payment of Basic Rent and shall not be pledged or otherwise serve to secure the payment of Basic Rent payable hereunder. Upon the occurrence of an Event of Default or Event of Non-Appropriation, funds on deposit in the Depreciation and Maintenance Account shall remain the property of the Tenant to be used for the aforementioned purposes and shall not be available for the payment of Basic Rent.

Tenant shall include the amount of the Annual Depreciation and Maintenance Requirement in its budget request to the State Legislature each year during the term of this Lease.

Section 3.3. Agreement for Payment of Administrative Fees as Additional Rent.

The parties to this Lease acknowledge that the Authority will incur administrative fees and expenses in the administration of the Lease as long as the Lease remains in effect. To reimburse the Authority for such fees and expenses, Tenant shall pay as Additional Rent an annual administrative fee pursuant to an "Administrative Service Fee Agreement" by and between the Authority and the Tenant.

Section 3.4. Rental Payments Payable Without Abatement or Setoff. Tenant covenants and agrees with and for the express benefit of the Authority and the Assignee that all Rental Payments shall be made by Tenant as the same become due, and that 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 Energy Center Project shall have been acquired, started or completed, or whether Authority's interest in the Landon Facilities 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 Tenant, 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 Authority's legal organization or status, or any default of Authority hereunder, and regardless of the invalidity of any action of Authority or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Lease. Tenant shall not have the right to terminate this Lease upon the failure of performance by the Authority of any obligation on its part undertaken hereunder. Nothing in this Lease shall be construed as a waiver by Tenant of any rights or claims Tenant may have against Authority under this Lease or otherwise, but any recovery upon such rights and claims shall be had from Authority separately, it being the intent of this Lease that Tenant, subject to annual appropriation by the State Legislature and other applicable law, shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease for the benefit of the Assignee.

Section 3.5. Rental Payments Constitute a Current Expense of Tenant. Authority and Tenant understand and intend that the obligation of Tenant to make Rental Payments and other obligations under this Lease are subject to annual appropriation of funds by the State Legislature and shall constitute a current expense of Tenant; and that such obligation shall not in any way be construed to be a debt of the Tenant, the State, or any municipal corporation or political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Tenant, the State, or any municipal corporation or political subdivision thereof, nor shall anything contained herein constitute a pledge of general tax revenues, funds or moneys of the Tenant, the State, or any municipal corporation or political subdivision thereof.

Section 3.6. Prepayment of Rental Payments. (a) Upon notice as herein provided, Tenant shall, upon the concurrence of the Authority, prepay, in whole but not in part, the remaining Principal Component of the Basic Rent then outstanding on any date upon the occurrence of a Change of Circumstances at a prepayment price of 101.00% of the Principal Component of Basic Rent then outstanding plus interest on said portion of the Principal Component then outstanding to the date of payment thereof. Notice of the intent of prepayment shall be given by Tenant to the Authority and the Assignee in writing not less than thirty (30) days prior to the proposed date for such prepayment, which notice shall be accompanied by an explanatory written statement of Authorized Tenant Representative.

(b) Upon notice as herein provided, Tenant may prepay, in whole but not in part, the remaining Principal Component of the Basic Rent then outstanding on any Basic Rent Payment Date on or after March 15, 2023, at a prepayment price of 101.00% of the Principal Component of Basic Rent then outstanding plus interest on said portion of the Principal Component then outstanding to the date of payment thereof. Notice of the intent of prepayment shall be given by Tenant to the Authority and the Assignee in writing not less than thirty (30) days prior to the proposed date for such prepayment, which notice shall be accompanied by an explanatory written statement of Authorized Tenant Representative.

Notwithstanding any other provision in this Lease, the Tenant may on any date secure the payment of the Basic Rent in whole but not in part by depositing with a trustee, escrow agent or other fiduciary selected by the Tenant and acceptable to the Authority an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Authority, which cash so held is either (a) sufficient to pay such Basic Rent, including the Principal Component and Interest Component thereof, in accordance with the Schedule of Basic Rent payments set forth in Schedule III or (b) invested in whole or in part in non-callable Government Obligations in such amount as will, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Authority and addressed and delivered to the Authority), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Basic Rent when due under Section 3.1 as the Tenant instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established, the Tenant shall deliver to the Authority an opinion of Special Tax Counsel (in form and substance acceptable to the Authority) to the effect that any

such security deposit will not adversely affect the excludability of the Interest Component of Basic Rent payments from gross income of the owners thereof for federal income tax purposes.

If the Tenant posts a deposit under this Section with respect to all unpaid Basic Rent payments, and notwithstanding the provisions of Section 2.2, (a) the Basic Term or Additional Term, as applicable, of this Lease will continue, (b) all obligations of the Tenant under this Lease, and all security provided by this Lease for said obligations, will thereupon cease and terminate, excepting only the obligation of the Tenant to make, or cause to be made, all of the payments of Basic Rent from such deposit and its obligation provided in the next succeeding paragraph, and (c) the Authority's leasehold interest in the Landon Facilities will terminate on the date of said deposit automatically and without further action by the Tenant. Said deposit constitutes a special fund for the payment of Basic Rent in accordance with the provisions of this Lease.

Notwithstanding anything in this Section 3.6 or otherwise in this Lease to the contrary, if the amount held as such deposit shall at any time be insufficient (for whatever reason) to pay Basic Rent payments when due in full as provided in this Section 3.6, the Tenant shall immediately pay to the Authority on the applicable due date or due dates the amount of any such shortfall from funds legally available for such purpose.

Section 3.7. Deposit of Rental Payments by Authority. The Authority shall cause to be deposited, used, directed and applied all Rental Payments in accordance with the provisions of this Lease.

Section 3.8. Annual Revenue Requirement. The Authority shall provide to the Tenant a statement setting forth Tenant's Annual Revenue Requirement for the succeeding Fiscal Year by October 1 of the preceding Fiscal Year.

ARTICLE IV

Section 4.1. Non-Appropriation. Notwithstanding anything in this Lease to the contrary, the cost and expense of the performance by the Tenant of its obligations, including, but not limited to, indemnification under the Lease and incurrence of any liabilities of Tenant under the Lease including, without limitation, the payment of all Rental Payments and all other amounts required to be paid by Tenant under the Lease, shall be subject to and dependent upon appropriations being made from time to time by the State Legislature for such purposes. If an Event of Non-Appropriation has occurred and is continuing, the Authorized Tenant Representative shall deliver written notice thereof to the Authority within ten (10) calendar days of such Event of Non-Appropriation. Upon the receipt of such notice, the Authority may proceed to exercise any of the remedies available upon an Event of Default under this Lease; provided, however, if at the time of such notice, the Authorized Tenant Representative delivers to the Authority a written statement to the effect that the Tenant reasonably expects sufficient funds for the then current Fiscal Year to be appropriated by the State Legislature, then in such event the Authority shall not exercise any of such remedies until the earlier of (i) 30 days after receipt of such notice, if such Event of Non-Appropriation is continuing, or (ii) such time as an Event of Default occurs by reason of such Event of Non-Appropriation.

ARTICLE V

Section 5.1. Establishment of Accounts Proceeds.

(a) There is hereby created and ordered established on the books and records of the State Treasurer, the following separate funds and accounts:

(1) Project Account for Kansas Development Finance Authority Lease (State of Kansas – Department of Administration Energy Center Project) (the “**Project Account**”);

(2) Costs of Issuance Account for Kansas Development Finance Authority Lease (State of Kansas – Department of Administration Energy Center Project) (the “**Costs of Issuance Account**”);

(3) Principal and Interest Account for Kansas Development Finance Authority Lease (State of Kansas – Department of Administration Energy Center Project) (the “**Principal and Interest Account**”);

(4) Depreciation and Maintenance Account for Kansas Development Finance Authority Lease (State of Kansas – Department of Administration Energy Center Project) (the “**Depreciation and Maintenance Account**”); and

(5) Rebate Account for Kansas Development Finance Authority Lease (State of Kansas – Department of Administration Energy Center Project) (the “**Rebate Account**”).

The Depreciation and Maintenance Account shall be established in the name of DOA as a separate bank account in a bank which is a member of and whose deposits are insured by the Federal Deposit Insurance Corporation for the use and purposes provided herein.

The Rebate Account shall be established in the name of the Authority as a separate bank account as provided herein and in the Arbitrage Agreement.

Section 5.2. Disposition of Assignment Proceeds. Proceeds from the assignment of the Lease in the amount of \$167,834.00 shall be deposited to the Costs of Issuance Account and used and applied to pay Costs of Issuance related to the Assignment. The balance of the proceeds (\$16,432,166.00) from the assignment of this Lease by the Authority to the Assignee pursuant to the Assignment shall be deposited to the Project Account as provided in the Site Lease to be used and applied as provided in and pursuant to this Lease.

Section 5.3. Investment of Funds. Moneys held for the credit of funds and accounts created or referred to herein shall, pursuant to the written approval of the Authorized Tenant Representative, be invested and reinvested by the Authority in eligible investments for State funds (including in conformity with any applicable statute through the Pooled Money Investment Board or other instrumentalities of the State) which shall mature, or which shall be subject to

redemption by the owner thereof at the option of such owner, not later than the dates when the moneys held for the credit of said funds or accounts will be required for the purposes intended; provided, however, such moneys shall not be invested directly or indirectly or used in any manner that would cause the Lease to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

Obligations so purchased as an investment of money in any such funds or account shall be deemed at all times to be a part of such fund or account, and earnings on all funds and accounts (except amounts required to be deposited into the Rebate Account in accordance with the Arbitrage Instructions) shall be credited to such fund or account and any loss resulting from such investment shall be charged to such fund or account.

ARTICLE VI

Section 6.1. Construction of Energy Center Project. The Authority and Tenant shall cause the construction of the Energy Center Project in accordance with Section 6.2 hereof.

Section 6.2. Construction of Energy Center Project. The Authority and Tenant mutually agree that as of the date of this Lease there exist no differences in each of their interpretations of the various agreements, including this Lease, relating to the Authority's duty to construct the Energy Center Project for the Tenant and the Tenant's duty to supervise acquiring, constructing, installing and equipping and maintenance of the Project and to pay Rental Payments required by this Lease. The Authority agrees to cooperate fully with the Tenant or any of those parties contracting with the Tenant for the acquisition, construction and installation of the Project.

Section 6.3. Project Contracts. The Tenant, on behalf of the Authority, shall immediately proceed to prepare, or cause to be prepared, as required, detailed plans and specifications for the Energy Center Project which shall be approved in writing by the Authorized Tenant Representative, and to award a contract or contracts for the construction of the Energy Center Project, as required, which contract or contracts shall also be approved in writing by the Authorized Tenant Representative.

Section 6.4. Payment of Project Costs.

(a) The Authority hereby agrees to pay for the costs of construction of the Energy Center Project, but solely and only to the extent that there are funds in the Project Account, and hereby authorizes and directs the payment of the same, but solely from the Project Account.

(b) The Tenant agrees to cause the Energy Center Project to be diligently and continuously prosecuted and to be completed with reasonable dispatch, and to provide, from other funds lawfully available to the Tenant, if required, all moneys necessary to complete the Energy Center Project substantially in accordance with the contracts therefor.

(c) In the event the moneys on deposit in the Project Account and available for payment of Project Costs, together with other Tenant funds, if any, for the Project Costs, are at

any time insufficient to pay for the completion of the Energy Center Project, the Tenant agrees to pay the amount of such deficiency, from other lawfully available funds, forthwith for deposit in the appropriate subaccount of the Project Account, subject to appropriation by the Legislature of the State.

(d) The moneys in the Project Account shall be disbursed for the payment of Project Costs in accordance with the provisions of this Lease, and the Authority hereby covenants and agrees that it will direct the State Treasurer to disburse such moneys in accordance with such provisions and such procedures established by the State for payment of costs of State projects as prescribed by statute and regulation for which payment is being requested. Attached hereto as **Exhibits A and B** are forms of certificates to be used by Tenant in making requisitions of Costs of Issuance and Costs of the Project. In making such payments and determinations pursuant to this Section, the Authority may rely upon the documentation referred to in this paragraph (d) and shall not be required to make any independent investigation in connection therewith. The Tenant shall keep and maintain adequate records pertaining to the Project Account and all disbursements therefrom, and shall make available statements of activity regarding the Project Account to the Authority at the end of each Fiscal Year and within 90 days after the Completion Date. Such records shall be maintained by the Tenant until all Rental Payments due under the Lease are paid plus three additional years.

(e) The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Authority of a Certificate of Completion and the Authority shall require the Tenant to deliver and the Tenant agrees to deliver to the Authority within 30 days after the Completion Date of the Energy Center Project a Certificate of Completion signed by the Authorized Tenant Representative stating that:

(1) the Energy Center Project has been fully completed substantially in accordance with the contracts for such Project, as then amended, as of the Completion Date; and

(2) an investigation has been made of such sources of information as are deemed by the Authorized Tenant Representative to be necessary, including pertinent records of the Tenant, and it is the opinion of the Authorized Tenant Representative that the Project Costs have been fully paid.

(f) If after receipt of the Certificate of Completion described in (e) above, there shall remain any moneys in the Project Account, such moneys shall be deposited in the Principal and Interest Account.

(g) Any commitment of other funds necessary to complete the Project shall be subject to the Tenant attaining necessary State approval for expenditure of such funds. Such funds shall be distinguished from Assignment proceeds, and shall be separately maintained and accounted for.

(h) If this Lease is terminated following an Event of Non-Appropriation while any amounts remain in the Project Account, the Tenant shall immediately transfer to the Authority all

moneys and investments then held in the Project Account for application to the Basic Rents that were scheduled to be paid pursuant to this Lease.

Section 6.5. Project Documents. The Tenant shall make available to the Authority on request the following Project documents:

(a) Plans and Specifications. All available preliminary, amended, and final plans and specifications for the Project.

(b) Construction Contracts. All architect's and general contractor's contracts for the Project and all prime subcontractor's contracts and purchase orders deemed necessary by the Authority for any machinery and equipment included in the Project.

(c) Performance and Public Works Bonds. Performance bonds as required by the director of procurement and contracts pursuant to Kansas statutes and regulations and Public Works Bonds as required by Kansas statutes and regulations, naming the Authority as dual obligees.

The Tenant covenants and agrees to obtain and thereafter make available to the Authority all remaining construction contracts, purchase orders, approvals, licenses and permits required or necessary for the Project.

Section 6.6. Changes or Amendments to Project Documents. The Tenant may make, authorize or permit such changes or amendments in the documents for the Project as it may reasonably determine to be necessary or desirable; provided, however, that no such change or amendment shall be made to the documents for the Project that would cause a material change in the cost, scope, nature, or function of such Project, unless the Tenant shall file with the Authority a certificate of the Authorized Tenant Representative to the effect that such Project will, after such change or amendment, continue to comply with the Act, and such change or amendment will not result in the Project being used for any purpose prohibited by this Lease or otherwise result in the Tenant failing to comply with any provisions of this Lease (including its covenants in Section 1.3(a) hereof regarding the establishment and maintenance of the excludability of the Interest Component from gross income of the owners thereof for federal income tax purposes), or materially adversely affect the Basic Rent available for payment of the Principal Component and Interest Component thereof, or violate or conflict with the terms of any applicable approvals of the State.

Section 6.7. Enforcement of Contracts and Surety Bonds. In the event of a material default of any contractor or subcontractor under any contract made in connection with the Energy Center Project or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Tenant will promptly proceed, either separately or in conjunction with others to pursue diligently the remedies of the Tenant against the contractor or subcontractor in default and against any surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the Tenant of any amounts theretofore paid by the Tenant and not previously

reimbursed to the Tenant for correcting or remedying of the default which gave rise to the proceedings against the contractor, subcontractor or surety, shall be paid into the appropriate subaccount of the Project Account if received before the Completion Date, and otherwise shall be deposited in the Principal and Interest Account and applied to payment of the Principal Component of the Basic Rent.

Section 6.8. Warranty of Purpose. Tenant warrants that the Energy Center Project is necessary for use by Tenant for its governmental purposes. Authority and Tenant agree that Tenant will proceed diligently to construct the Project. Upon completion of the Energy Center Project as acceptable to Tenant, the Authorized Tenant Representative shall deliver a Certificate of Completion to the Authority and the date of such delivery shall be the Completion Date.

Section 6.9. Surplus in Project Account. Any amount remaining in the Project Account after the Certificate of Completion for the Project has been delivered to the Authority, shall be transferred to the Principal and Interest Account and applied to payment of the Principal Component of the Basic Rent.

Section 6.10. Right of Entry by Authority. The duly authorized agents of the Authority and the Authorized Tenant Representative shall have the right at any reasonable time to have access to the Project or any parts thereof for the purpose of inspecting and supervising the construction thereof.

Section 6.11. Machinery and Equipment Purchased by Tenant. If no part of the purchase price of an item of machinery, equipment or personal property has been paid from funds or proceeds of the Assignment, then such item of machinery, equipment or personal property shall not be deemed a part of the Project.

Section 6.12. Energy Center Project Property of Tenant. All improvements and work constituting a part of the Energy Center Project, all work and materials on the Energy Center Project as such work progresses, and the Energy Center Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Energy Center Facilities, and the Energy Center Facilities as repaired, rebuilt, rearranged, restored or replaced by Tenant under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately be and become the absolute property of Tenant, not in any manner or respect subject to the provisions of the Site Lease.

ARTICLE VII

Section 7.1. Insurance as a Condition to Disbursement of Project Funds. As a condition precedent to disbursement of funds from the Project Account pursuant to **Article VI** hereunder, the Tenant shall provide and covenants and agrees that it will, at its sole cost and expense, keep both the Energy Center Facilities and the Landon Facilities constantly insured against loss or damage by fire, lightning and all other risks covered by the Blanket Insurance Policy or other insurance acceptable to the Authority which Tenant shall deliver to the Assignee prior to or contemporaneously with the execution and delivery of this Lease, the Site Lease and

the Assignment, and from time to time thereafter as required by Assignee, evidence of all such insurance satisfactory to Assignee.

Section 7.2. General Insurance Provisions with Respect to the Landon Facilities.

The Tenant shall be obligated and hereby covenants and agrees to maintain policies of insurance with respect to the Landon Facilities subject to the following requirements:

(a) All policies of such insurance and all renewals thereof shall name the Authority and the Tenant as insureds as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the provider thereof without at least thirty (30) days written notice to the Authority and the Tenant and shall be jointly payable to the Authority, and the Tenant. The Authority and the Tenant each hereby agree to do anything necessary, be it the endorsement of checks or otherwise, to cause any payment to be made to the Authority, as long as such payment is required by this Lease to be made to the Authority.

(b) Each policy of insurance hereinabove referred to shall be issued by an insurance company licensed to do business in the State and rated "A" or better by S&P or A.M. Best.

(c) The initial premium on the policies of insurance herein required shall be paid by or on behalf of the Tenant prior to or concurrently with the assignment of this Lease, or, if sufficient policies are presently in effect, the Tenant shall file evidence of such insurance with the Authority concurrently with the execution and delivery of the Assignment.

(d) Each policy of insurance required herein may be provided through a Blanket Insurance Policy maintained by the Tenant.

Section 7.3. Evidence of Title. The Tenant shall furnish the Authority with an opinion of counsel, who shall be Chief Attorney for the Department of Administration for the State of Kansas, that as of the date of the Lease, fee simple title to the Landon Site is vested in the State, and that such title is subject to no liens or encumbrances that would interfere with the Lease. Said opinion shall speak as of the date of delivery of the Assignment. The Tenant shall, at its expense, cause the Site Lease, the Assignment and this Lease to be recorded in the office of the Recorder of Deeds of Shawnee County, Kansas, on or before the date of deposit of the Assignment proceeds as provided in Section 5.2 hereof. Concurrent with such recordation, the Authority shall obtain a title insurance policy (in form and content, and with a title insurer, acceptable to the Assignee) insuring the Authority's leasehold estate in the Landon Site under the Site Lease for the benefit of the Assignee, in an amount at least equal to the aggregate original Principal Component. All Net Proceeds received under such title insurance policy shall be applied to the payment of the Principal Component of the Basic Rent which remains unpaid.

ARTICLE VIII

Section 8.1. Impositions. Tenant shall, during the life 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, Tenant shall be required to pay only such installments thereof as become due and payable during the life of this Lease as and when the same become due and payable. Authority covenants that without Tenant's written consent it will not, unless required by law, take any action which may reasonably be construed as tending to cause or induce the levying or assessment of any Imposition which Tenant would be required to pay under this Article and that should any such levy or assessment be threatened or occur, Authority shall, at Tenant's request, fully cooperate with Tenant in all reasonable ways to prevent any such levy or assessment.

Section 8.2. Authority May Not Sell. Authority covenants that, unless Tenant is in default under this Lease or this Lease has been terminated following an Event of Non-Appropriation, it will not, without Tenant's written consent, unless required by law, sell, assign or otherwise part with or encumber its interest in the Landon Facilities at any time during the life of this Lease; provided, however, the Authority may sell and assign its interest in this Lease and the Site Lease to Assignee pursuant to the Assignment. Subsequent assignment by Assignee and its assigns will be subject to the restrictions, limitation and terms set forth in the Assignment.

Section 8.3. Contest of Impositions. Tenant shall have the right, in its own or Authority's name or both, to contest the validity or amount of any Imposition by appropriate legal proceeding; instituted at least ten (10) days before the Imposition complained of becomes delinquent if, and provided, Tenant (i) before instituting any such contest, shall give Authority written notice of its intention to do so and, if requested in writing by Authority, shall deposit with the Authority a surety bond of a surety company acceptable to Authority as surety, in favor of Authority, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Imposition together with all interest and penalties to accrue thereon and estimated costs of suit, and (ii) shall diligently prosecute any such contest and at all times effectively stay or prevent any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays or otherwise satisfies any final judgment enforcing the Imposition so contested and thereafter promptly procures a recorded release or satisfaction thereof. Tenant shall hold Authority whole and harmless from any costs and expenses Authority may incur related to any such contest.

ARTICLE IX

Section 9.1. Use of Project. Subject to the provisions of this Lease, Tenant has the right to use the Landon Facilities and the Energy Center Facilities for any and all purposes allowed by law and contemplated by the Constitution of the State, the Act and applicable provisions of the Code. Tenant shall comply with all statutes, laws, resolutions, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, including (without limitation) all anti-money laundering laws and regulations, now or hereafter applicable to the Landon Facilities and the Energy Center Facilities or to any adjoining public ways, as to the manner of use or the

condition of the Landon Facilities and the Energy Center Facilities or to any adjoining public ways. Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of the Lease. 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 Tenant to comply with the provisions of this Lease.

Section 9.2. Limitations on Use of Project. The Tenant must not use the Landon Facilities or the Energy Center Facilities, or allow or cause the Landon Facilities or the Energy Center Facilities to be used, for any commercial or private use or purpose except such use as may be incidental and directly related to the Tenant's individual governmental use hereunder. No use of the Landon Facilities or the Energy Center Facilities shall be made by the Tenant, or shall be permitted to be made, which would violate the covenants set forth in **Section 1.3** hereof.

ARTICLE X

Section 10.1. Sublease by Tenant. Tenant may sublease all or portions of the Landon Facilities and the Energy Center Facilities to Governmental Units. Tenant may sublease the Landon Facilities and the Energy Center Facilities to non-Governmental Units with the prior written consent of Authority, provided such sublease does not adversely affect the exclusion from gross income for federal income tax purposes of the Interest Component of the Basic Rent and that such sublessee shall not encumber or dispose of the Landon Facilities or the Energy Center Facilities and such sublessee is an agency or instrumentality of the State. In the event of any such subleasing, Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between Authority and any such subtenant shall relieve 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 10.2. Assignment by Tenant. Tenant may assign its interest in this Lease in accordance with or in furtherance of the purposes set forth in the Act and insofar as permitted by law, with the prior written consent of Authority, provided such assignment does not affect the tax-exempt status of the Interest Component of the Basic Rent payable hereunder, that such assignee shall not encumber or dispose of the Landon Facilities or the Energy Center Facilities, and such assignee is an agency or instrumentality of the State. In the event of any such assignment, 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 Authority and any such assignee shall relieve Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following section.

Section 10.3. Release of Tenant. If, in connection with an assignment by Tenant of its interests in this Lease, (1) the assignee thereof shall file with the Authority and the Assignee its prior written consent to such assignment, which consent the Assignee may grant, withhold or condition in its sole discretion, and (2) the proposed assignee is an agency or instrumentality of the State which shall expressly assume and agree to perform all of the obligations of Tenant under this Lease and execute a tax compliance agreement; then and in such event Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

Section 10.4. Covenant Against Other Assignments. 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 herein set forth.

ARTICLE XI

Section 11.1. Repairs and Maintenance. Tenant covenants and agrees that it will, during the Term of this Lease, keep and maintain the Landon Facilities and the Energy Center Facilities and all parts thereof in good condition and repair, 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 Landon Facilities and the Energy Center Facilities in good mechanical and working order, and that during said period of time it will keep the Landon Facilities and the Energy Center Facilities and all parts thereof free from filth, nuisance or conditions unreasonably increasing the danger of fire.

Section 11.2. Operating Costs. The Tenant covenants and agrees that it will, during the term of this Lease, pay all of the costs incurred by it in operating and using the Landon Facilities and the Energy Center Facilities.

ARTICLE XII

Section 12.1. Alteration of Landon Facilities and Energy Center Facilities. 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 Landon Facilities and the Energy Center Facilities as Tenant from time to time may deem necessary or advisable; provided, however, Tenant shall not make any major addition, change or alteration which will adversely affect the intended use or structural strength of any part of the Landon Facilities and the Energy Center Facilities. All additions, changes and alterations made by Tenant to the Landon Facilities and the Energy Center Facilities pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in strict compliance with all laws and regulations applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and, (c) when completed, shall be deemed a part of the Landon Facilities or the Energy Center Facilities, as the case may be; provided, however, that additions of machinery, equipment and/or personal property of Tenant, not purchased or acquired with Assignment proceeds shall remain the separate property of Tenant and may be removed by Tenant prior to expiration of the Basic Term and any Additional Term of this Lease, provided such removal from the Landon Facilities or the Energy Center Facilities can be accomplished without material damage to the Landon Facilities or the Energy Center Facilities, as the case may be; provided further, however, that all such additional machinery, equipment and/or personal property which remains in the Landon Facilities or the Energy Center Facilities after the termination of this Lease for any cause other than the purchase of the Landon Facilities pursuant to **Article XIX** hereof, shall, upon and in the event of such termination, become the separate and absolute property of Authority, subject to the Site Lease in the case of the Landon Facilities.

ARTICLE XIII

Section 13.1. Additional Improvements. Tenant shall have and is hereby given the right, at its sole cost and expense, to construct within areas occupied by the Landon Facilities or the Energy Center Facilities, or in airspace above the Landon Facilities or the Energy Center Facilities, such additional buildings and improvements as Tenant from time to time may deem necessary or advisable. All such buildings and improvements constructed by Tenant pursuant to the authority of this Article shall, during the Basic Term and any Additional Term, remain the property of Tenant and may be added to, altered or razed and removed by Tenant at any time during the Term hereof. Tenant covenants and agrees (a) to make all repairs and restorations, if any, required to be made to the Landon Facilities or the Energy Center Facilities because of the construction of, addition to, alteration or removal of, said additional improvements, (b) to keep and maintain said additional improvements in good condition and repair, ordinary wear and tear excepted, (c) to promptly and with due diligence either raze and remove from the Landon Site or the Energy Center Site in a good, workmanlike manner, or repair, replace or restore such of said additional improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional improvements constructed by Tenant pursuant to this Article which remain in place after termination of this Lease for any cause other than the purchase of the Landon Facilities pursuant to **Article XIX** hereof shall, upon and in the event of such termination, become the separate and absolute property of the Authority, subject to the Site Lease.

ARTICLE XIV

Section 14.1. Securing of Permits and Authorizations. Tenant shall not do or permit others under its control to do any work in or in connection with the Landon Facilities or the Energy Center Facilities or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Energy Center Facilities, or any part thereof, unless all applicable 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, resolutions, governmental regulations and requirements.

Section 14.2. Mechanics' Liens. Pursuant to K.S.A. 60-723, no part of the Landon Facilities may be encumbered by any mechanics' or other similar lien. Notice is hereby given that Authority does not authorize or consent to and shall not be liable for any labor or materials furnished to Tenant or anyone claiming by, through or under Tenant upon credit, by contract or otherwise, and that neither a demand or claim nor mechanics, or similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of Authority in and to the Landon Facilities, this Lease or any part thereof.

Section 14.3. Contest of Liens. The Tenant, notwithstanding the above, shall have the right to contest any such mechanics', or other similar lien if within a thirty (30) day period it (i) notifies the Authority in writing of its intention so to do, and if requested by the Authority, deposits with the Authority a surety bond issued by a surety company acceptable to the Authority as surety, in favor of the Authority or cash, in the amount of the lien claim so contested, indemnifying and protecting the Authority 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, and (ii) diligently pursues such contest, at all times effectively staying or preventing any official or sale of the Landon Facilities or any part thereof or interest therein, under execution or otherwise, and (iii) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures a recorded release or satisfaction thereof.

Section 14.4. Utilities. All utilities and utility services used by the Tenant in, on or about the Landon Facilities 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 XV

Section 15.1. Indemnity. Subject to the provisions of K.S.A. 75-6101 *et seq.* and other applicable law, Tenant covenants and agrees, at its expense, to pay, and to indemnify and save the Authority and Assignee and all agents, members, directors, officers and employees (for the purpose of only this **Article XV**, such parties are collectively referred to hereafter as "**Indemnified Parties**") thereof harmless against and from, any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the acquisition, construction, equipping, occupation, use, operation, maintenance, possession, conduct or management of, or from any work done in or about the Landon Facilities, or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Energy Center Project or the Energy Center Facilities or the occupancy or use thereof except for matters involving the Authority's or Assignee's own negligence. Subject to the provisions of K.S.A. 75-6101 *et seq.* and other applicable law, Tenant also covenants and agrees, at its expense, to pay and to indemnify and save the Indemnified Parties harmless against and from, any and all claims arising from (i) any condition of the Landon Facilities or the Energy Center Project and the adjoining sidewalks and passageways, (ii) any breach or default on the part of Tenant in the performance of any covenant or agreement to be performed by Tenant pursuant to this Lease, (iii) any act or negligence of Tenant or any of its agents, contractors, servants, employees or licensees in connection with their use, occupancy or operation the Landon Facilities or (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation, in or about the Landon Facilities or the Energy Center Project or upon or under the sidewalks and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this **Section 15.1**. In the event that any action or proceeding is brought against the Indemnified Parties by reason of any such claim, Tenant, upon notice from any of the Indemnified Parties, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Parties.

Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur any pecuniary liability whatsoever by reason of the terms of this Lease, or the undertakings required of the Authority hereunder, this Lease, by reason of the performance, or nonperformance, of any act required of the Authority by this Lease, or by reason of the performance, or nonperformance, of any act requested of it by Tenant, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations

pertaining to the foregoing; nevertheless, if the Indemnified Parties should incur any such pecuniary liability then in such event Tenant, subject to the provisions of K.S.A. 75-6101 *et seq.* and other applicable law, shall indemnify and hold harmless the Indemnified Parties against all claims, fees, including attorney fees, and expenses by or on behalf of any person, firm, corporation, or governmental authority, arising out of the same, and all costs fees and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from any of the Indemnified Parties, Tenant shall defend and hold harmless the Indemnified Parties in any such action or proceeding. This **Section 15.1** shall survive the termination of this Lease for any claim, proceeding or action arising from any event or omission occurring during the Basic Term and any Additional Term and after the termination, due to an Event of Default or Event of Non-Appropriation, for any period Tenant, sublessee or assignee occupies the Energy Center Facilities.

The provisions of this Article shall not require Tenant to indemnify, hold harmless or defend matters involving Authority's or Assignee's own negligence, intentional tort or breach of contract.

Section 15.2. Liability. Subject to **Article IV** hereof, the provisions of K.S.A. 75-6101 *et seq.* and other applicable law, Tenant hereby accepts all responsibility relating to the operation, construction, maintenance and repair of the Landon Facilities and the Energy Center Facilities during the Basic Term or any Additional Term and agrees that the Authority and Assignee shall not have any liability therefor.

ARTICLE XVI

Section 16.1. Access to Landon Facilities and Energy Center Facilities. Authority, for itself and its duly authorized representatives and agents, reserves the right to enter the Landon Facilities (including specifically such reserved right for the Assignee with respect to the Landon Facilities) and the Energy Center Facilities at all reasonable times during usual business hours throughout the Basic Term and the Additional Term for the purpose of (a) examining and inspecting the same, (b) performing such work made necessary by reason of Tenant's default under any of the provisions of this Lease, and (c) while an Event of Default is continuing hereunder or after the occurrence of an Event of Non-Appropriation, for the purpose of exhibiting the Landon Facilities to prospective purchasers, lessees or mortgagees. Authority may, subject to Tenant's prior written approval, which approval shall not be unreasonably withheld, and supervision, during the progress of said work mentioned in (b) above, keep and store on the Landon Facilities all necessary materials, supplies and equipment, and Authority shall not cause any unnecessary inconvenience, annoyances, disturbances, loss of business or other damages to Tenant by reason of the performance of any such work or the storage of such materials, supplies and equipment.

ARTICLE XVII

Section 17.1. Environmental Covenants. The Tenant, at its sole cost and expense, shall (i) maintain the Landon Facilities and the Energy Center Facilities and conduct all activities thereon in compliance with applicable Environmental Laws; (ii) conduct any assessment,

investigation, remediation or other activity necessary to identify, remove, remediate, clean up, prevent, abate or otherwise fully address any release or threatened release of Hazardous Substances or migration or continuation thereof to the extent required by applicable governmental authorities or Environmental Laws or as is otherwise necessary to preserve the use and value of such properties; and (iii) promptly notify the Authority and the Assignee (but only with respect to the Landon Facilities) of any release or discovery of Hazardous Substances in, at, under or from the Landon Facilities or Energy Center Facilities in violation of applicable Environmental Laws or in any manner that could reasonably be expected to materially and adversely affect such properties. In the event that the Tenant does not expeditiously proceed as required by this Section 17.1, the Authority or the Assignee, immediately after notice to the Tenant, may elect to undertake any action required of the Tenant pursuant to this Section. Any moneys expended by the Authority in connection therewith (including, without limitation, the cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and attorneys' fees) shall be due and payable as Additional Rent under the Lease, subject to the availability of appropriated funds, with interest thereon at the average rate of interest per annum of the Interest Component of the Base Rent from the date such cost is incurred.

Subject to annual appropriation by the State Legislature, to the extent the Tenant may lawfully do so, the Tenant has agreed to indemnify the Authority and the Assignee and defend and hold them harmless from and against all loss, cost, damage, fine, penalty and expense including, without limitation, attorneys' fees and costs associated with or incurred in the investigation, defense and settlement of claims that they may incur, directly or indirectly, as a result of or in connection with the assertion against them of, or any claim relating to, the investigation, remediation, presence, release, escape, migration or removal of, or exposure to, any Hazardous Substance, or compliance with any applicable Environmental Law, whether before, during or after the term of the Lease, including claims relating to personal injury or damage to property.

ARTICLE XVIII

Section 18.1. Automatic Option to Extend Term. Authority shall have an automatic extension of the Basic Term of this Lease for an additional ten (10) years if an Event of Default has occurred and this Lease is not discharged.

ARTICLE XIX

Section 19.1. Option to Purchase Landon Facilities. Subject to the provisions of this Article and Section 3.6 hereof, Tenant shall have the right and option to reacquire the Landon Facilities at any time during the Basic Term and any Additional Term hereof. Tenant shall exercise its aforesaid option by exercising the prepayment option in **Section 3.6(b)** hereof and by giving Authority and Assignee written notice of Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "**Closing Date**") shall neither be earlier than thirty (30) days nor later than one hundred eighty (180) days after the notice is given. Tenant may not, however, exercise said option if Tenant is in default hereunder on such Closing Date.

Exercise of the Tenant's prepayment option pursuant to Section 3.6 at the prepayment price therein provided shall constitute exercise of Tenant's right and option to purchase the Landon Facilities as herein provided without regard to notice.

Section 19.2. Quality of Title and Purchase Price. If said notice of election to purchase be given as aforesaid or if payment of all amounts payable as Basic Rent shall have been paid as provided in Section 19.1 above, Authority and Assignee as the case may be shall sell and convey and release their respective interests in and to the Landon Facilities to Tenant on the Closing Date free and clear of all liens and encumbrances created by or through the Authority or the Assignee, as the case may be, except (a) those to which the title was subject on the date of the Site Lease, or to which title became subject with Tenant's written consent, or which resulted from any failure of Tenant to perform any of its covenants or obligations under this Lease, (b) taxes and assessments, general and special, if any, and (c) the rights, titles and 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 Landon Facilities, for the price and sum as follows (which Tenant shall and covenants and agrees to pay in cash at the time of delivery of Authority's and Assignee's deed or other instrument or instruments of transfer or release of interest in and to the Landon Facilities to Tenant as hereinafter provided):

(i) The full amount which is required to provide funds which are sufficient, in accordance with the provisions of this Lease, to pay amounts necessary to provide for payment of the Principal Component of the Basic Rent and the Interest Component and amounts required as payment of Additional Rent hereunder through the date of payment thereof and all costs, expenses and premiums incident to the payment of said Rental Payments in full, plus

(ii) \$100.00.

Nothing in this Article shall release or discharge 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 Closing Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by Tenant prior to the Closing Date.

Section 19.3. Closing of Purchase. On the Closing Date, Authority and Assignee shall deliver to Tenant its appropriate instrument or instruments of conveyance, assignment or release, properly executed and conveying the Landon Facilities to Tenant free and clear of all liens and encumbrances created by or through the Authority or the Assignee, as the case may be, except as set forth in Section 19.2 hereof, or conveying such other title to the Landon Facilities as may be acceptable to Tenant; and then and there Tenant shall pay the full purchase price for the Landon Facilities as follows: (a) the Basic Rent amount specified in clause (i) of Section 19.2 shall be paid to the Assignee and any interest thereon, and (b) the Additional Rent amount specified in clause (i) of Section 19.2 plus the amount specified in clause (ii) of said Section 19.2 shall be paid to Authority; provided, however, nothing herein shall require Authority or Assignee to deliver any instrument or instruments of assignment, conveyance or release to Tenant until and after all duties and obligations of Tenant under this Lease to the date of such

delivery have been fully performed and satisfied. Upon the delivery to Tenant of Authority's and Assignee's appropriate instrument or instruments of assignment, conveyance or release and payment of the purchase price by Tenant, this Lease shall, ipso facto, terminate.

Section 19.4. Effect of Failure to Complete Purchase. If, for any reason whatsoever, the purchase of the Landon Facilities by Tenant pursuant to valid notice of election to purchase given as aforesaid is not effected on the Closing 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.

Section 19.5. Application of Condemnation Awards if Tenant Purchases Landon Facilities. The right of Tenant to exercise its option to purchase the Landon Facilities 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 Landon Facilities. If Tenant shall exercise said option and pay the purchase price as provided in this Article, all of the condemnation awards received by Authority or Assignee after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by Authority or Assignee in connection with such condemnation, shall belong to and be paid to the Tenant.

ARTICLE XX

Section 20.1. Damage and Destruction.

(a) If, during the Basic Term, or any Additional Term, the Landon Facilities are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Authority 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 the Landon Facilities.

(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, the Net Proceeds, if any, of any applicable casualty insurance received with respect to any such damage or loss to the Landon Facilities shall be paid to the Authority and deposited in the Project Account and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing. Any amount remaining in the Project Account, with respect to such damage or loss, after such rebuilding, repairing, restoring or replacing shall be applied to the payment of the Principal Component of the Basic Rent then unpaid.

(c) If the Tenant shall determine that rebuilding, repairing, restoring or replacing the Landon Facilities is not practicable and desirable, and upon obtaining the written consent of the Authority, the Net Proceeds, if any, of any applicable casualty insurance received with respect to any such damage or loss to the Landon Facilities shall be paid to the Authority to be applied to the mandatory prepayment of the Principal Component of the Basic Rent then unpaid pursuant to **Section 3.6(a)** hereof, including at the prepayment price specified therein. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) If, prior to completion of the Energy Center Project, the Energy Center Project is damaged or destroyed in whole or in part, by fire or other casualty, the Tenant shall notify the Authority and the Assignee 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 the Energy Center Project.

(e) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing of the Energy Center Project so damaged or destroyed is practicable and desirable, the Tenant shall proceed as provided in (b) above, and if Tenant shall determine rebuilding, repairing, restoring or replacing the Energy Center Project is not practicable or desirable, the Tenant shall proceed as provided in (c) above.

(f) The Tenant shall not, by reason of its inability to use all or any part of the Landon Facilities, the Energy Center Project or the Energy Center Facilities during any period in which the Landon Facilities or the Energy Center Facilities are damaged or destroyed, or is being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, fail to comply with the provisions of this Lease.

Section 20.2. Condemnation.

(a) If, during the Basic Term, or any Additional Term, title to, or the temporary use of, all or any part of the Landon Facilities shall be condemned by an authority exercising the power of eminent domain, the Tenant shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Authority in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire or construct substitute improvements. Any such substitution of improvements shall be subject to the approval of the Authority in its sole and absolute discretion.

(b) If the Tenant shall determine that such substitution is practicable and desirable, upon obtaining the approval of the Authority as required by paragraph (a) of this **Section 20.2**, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any Net Proceeds received from any award or awards with respect to the Landon Facilities or any part thereof made in such condemnation or eminent domain proceedings shall be paid to the Authority and shall be deposited in the Project Account and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Account, with respect to such condemnation or eminent domain proceedings, after such acquisition or construction shall be applied to the payment of the Principal Component of the Basic Rent which remains unpaid.

(c) If the Tenant shall determine that it is not practicable and desirable, to acquire or construct substitute improvements, and upon obtaining the written consent of the Authority, any Net Proceeds of condemnation awards received by the Tenant shall be paid to the Authority to be applied to the mandatory prepayment of the Principal Component of the Basic Rent which remains unpaid pursuant to **Section 3.6(a)** hereof, including at the prepayment price specified therein. 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 Landon Facilities or the Energy Center Facilities during any such period of acquisition or construction of substitute land and improvements nor by reason of the payment of the costs of such acquisition or construction of substitute land and improvements, fail to comply with the provisions of this Lease.

(e) The Authority shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Landon Facilities or any part thereof. In no event will the Authority voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Landon Facilities or any part thereof without the written consent of the Tenant.

ARTICLE XXI

Section 21.1. Notice of Default. If an Event of Default shall have occurred and be continuing, the Authority shall promptly notify the Assignee and Tenant of such default.

Section 21.2. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Authority may take any one or more of the following remedial actions:

(a) By written notice to the Tenant, declare the aggregate amount of all unpaid Rental Payments then or thereafter scheduled 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; or

(b) Give Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than ten (10) days after such notice is given and, if all defaults have not then been cured on the date so specified, Tenant's rights to possession of the Landon Facilities shall cease, and this Lease shall thereupon be terminated, and the Authority may re-enter and take possession of the Landon Facilities, as of the Authority's former estate; or

(c) Without terminating the term hereof, re-enter the Landon Facilities or take possession thereof, where practical to do so, pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Landon Facilities without terminating the term of this Lease, Authority if it deems it practical and economical, shall use reasonable diligence to relet the Landon Facilities, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as Authority may deem advisable, with the right to make alterations and repairs to the Landon Facilities, and no such re-entry or taking of possession of the Landon Facilities by Authority shall be construed as an election on Authority's part to terminate this Lease and no such re-entry or taking of possession by Authority shall relieve Tenant of its obligation, subject to an annual appropriation by the State Legislature and other applicable laws, to pay Rental Payments, 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, and Tenant shall continue to pay the Rental Payments provided for in this Lease until the end of the Term, whether or not the Landon Facilities shall

have been relet, less the net proceeds, if any, of any reletting of the Landon Facilities after deducting all of Authority's expenses incurred in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation of the Landon Facilities for reletting.

Net proceeds of any reletting shall be applied to the payment of Basic Rent due and payable hereunder. Having elected to re-enter or take possession of the Landon Facilities pursuant to subsection (c) hereunder, Authority may by notice to Tenant given at any time thereafter while Tenant is in default in the payment of any Rental Payments or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with subsection (b) hereunder. If, in accordance with any of the foregoing provisions of this Article, Authority shall have the right to elect to re-enter and take possession of the Landon Facilities, Authority may enter and Tenant shall deliver to the Authority the Landon Facilities or cause such delivery of the Landon Facilities to be made to the Authority and thereafter the Authority may remove the property and effects of both or either without being guilty or in any manner of trespass and without prejudice to any remedies for arrears of any Rental Payments or preceding breach of covenant.

(d) If such Event of Default occurs while any amounts remain in the Project Account, the Tenant shall immediately transfer to the Authority all moneys and investments then held in the Project Account for application to the Basic Rents that were scheduled to be paid pursuant to this Lease.

(d) Authority shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding, or exercise such one or more of the rights and powers conferred by this Article as the Authority may require, which the Authority, being advised by counsel, shall deem most expedient in the interests of the the Authority, including sale of its interest in the Landon Facilities after termination as provided in subsection (b) hereof.

Any suit or proceeding instituted by the Authority shall be brought in its name as Authority without necessity of joining as plaintiffs or defendants and any recovery of judgment shall be for the benefit of the Authority.

Section 21.3. Survival of Obligations. Subject to an annual appropriation by the State Legislature and other applicable law, Tenant covenants and agrees with Authority that until the Tenant's payment in full of its Rental Payments due by Tenant throughout the entire term of this Lease are paid in full or provision made for the payment thereof in accordance with this Lease, its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that Tenant shall, subject to an annual appropriation by the State Legislature and other applicable law, continue to pay Rental Payments and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease.

Section 21.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority 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. 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 as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

Section 21.5. Assignee to Exercise Rights. Such rights and remedies as are given to the Authority under this Article XXI have been assigned by the Authority to the Assignee under the Assignment, to which assignment the Tenant hereby consents. Such rights and remedies shall be exercised solely by the Assignee (including subsequent assignees to the extent permitted under the Assignment).

ARTICLE XXII

Section 22.1. Performance of Tenant's Obligations by Authority. If Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then Authority may upon the continuance of such failure on Tenant's part for thirty (30) days after notice of such failure is given to Tenant by Authority, and without waiving or releasing Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and Tenant shall reimburse Authority for all sums so paid by Authority and all necessary or incidental costs and expenses incurred by Authority in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by Tenant within ten (10) days of demand, Authority shall have the same rights and remedies provided for in **Article XXI** in the case of default by Tenant in the payment of Basic Rent.

ARTICLE XXIII

Section 23.1. Financial Information. The Tenant has kept, and throughout the term of this Lease shall keep or cause to be kept, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to the Authority (a) the comprehensive annual financial report of the State of Kansas, which includes the annual audited financial statements of the State, within 270 days after its fiscal year end, (b) such other financial statements and information as the Authority may reasonably request, and (c) its annual budget for the following fiscal year when approved but not later than 30 days prior to its current fiscal year end. The financial statements described in subsection (a) shall be accompanied by an unqualified opinion of independent certified public accountants selected by the State. Credit information relating to the Tenant may be disseminated among the Assignee and any of its affiliates and any of their respective successors and assigns.

ARTICLE XXIV

Section 24.1. Surrender of Possession. Upon accrual of Authority's right of re-entry as the result of Tenant's default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise, Tenant shall peacefully surrender possession of the Landon Facilities to Authority in good condition and repair, ordinary wear and tear excepted; provided, however, Tenant shall have the right, prior to or within sixty (60) days after the termination of

this Lease, to remove from or about the Landon Facilities the machinery, equipment, personal property, furniture and fixtures which Tenant owns under the provisions of this Lease and not constituting a part of the Landon Facilities. All repairs to and restorations of the Landon Facilities required to be made because of such removal shall be made, by and at the sole cost and expense of Tenant. All machinery, equipment, personal property, furniture and fixtures owned by Tenant and which are not so removed from or about the Landon Facilities prior to or within sixty (60) days after the termination of this Lease shall become the separate and absolute property of the Authority.

ARTICLE XXV

Section 25.1. 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 or certified mail, postage prepaid, return receipt requested, to the Notice Representative at the Notice Address. All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed.

Section 25.2. Suspension of Mail Service. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Authority or the Assignee, as the case may be, shall constitute a sufficient notice.

ARTICLE XXVI

Section 26.1. Net Lease. The parties hereto agree (a) that this Lease is intended to be a net lease, (b) that the payments of Rental Payments are designed to provide Authority with funds adequate in amount to pay all of Tenant's Rental Payments due hereunder throughout the entire term of this Lease 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 Rental Payments are not adequate to provide the Authority with funds sufficient for the purposes aforesaid, Tenant shall, subject to an annual appropriation therefor by the State Legislature, 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 26.2. Funds Remaining After Payment of all Basic Rent. If, after the Principal Component and Interest Component of the Basic Rent and all costs incident to the payment thereof have been paid in full, any unexpended funds received in accordance with the terms hereof, shall, except as otherwise provided in this Lease and after payment therefrom to Authority of any sums of money then due and owing by Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

ARTICLE XXVII

Section 27.1. Rights and Remedies. The rights and remedies reserved by Authority and 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. In addition thereto, the Authority 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 27.2. 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 27.3. Authority Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that Authority or its Assignee shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, Authority and Assignee, as the case may be, shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

ARTICLE XXVIII

Section 28.1. Quiet Enjoyment and Possession. So long as Tenant shall not be in default under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Landon Facilities and the Energy Center Facilities. The Authority denounces any title or real property interest in the Energy Center Facilities but retains certain rights hereunder for the sole purpose of protecting the tax-exempt status of the Interest Component of the Basic Rent.

ARTICLE XXIX

Section 29.1. Amendments. This Lease may be amended, changed or modified in the following manner:

(a) With respect to any amendment, change or modification which will materially adversely affect the security or rights of the Assignee by an agreement in writing executed by the Authority and Tenant and consented to in advance in writing by Assignee.

(b) With respect to any amendment, change or modification which reduces or modifies in any respect any of the Rental Payments by an agreement in writing executed by the Authority and Tenant and consented to in advance in writing by the Assignee; and

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

At least thirty (30) days prior to the execution of any agreement pursuant to this Article, the Authority and Tenant shall furnish the Assignee with a copy of the amendment, change or modification proposed to be made.

Section 29.2. Granting of Easements. If no Event of Default or Event of Non-Appropriation under this Lease shall have happened and be continuing, Tenant may, at any time and from time to time (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Landon Facilities, free from any rights of Authority or the Assignee, 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 Tenant shall determine, and Authority and Assignee agree, to the extent that it may legally do so, that each of them 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 Authority and Assignee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Authorized Tenant Representative requesting such instrument and (iii) a certificate executed by Tenant stating (aa) that such grant or release is not detrimental to the proper conduct of the business of Tenant, and (bb) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Landon Facilities and will not materially adversely affect the security of the Assignee. 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 Authority and the Assignee and shall not be affected by any termination of this Lease or default on the part of Tenant hereunder. If no Event of Default or Event of Non-Appropriation shall have happened and be continuing, any payments or other consideration received by Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of Tenant, but in the event of the termination of this Lease as the result of an Event of Default or an Event of Non-Appropriation or default of Tenant, all rights then existing of Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by Authority or Assignee, as the case may be.

Section 29.3. Security Interests. Authority, its Assignee and 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 Authority and Assignee in and to the Landon Facilities and the accounts established hereunder. The Authority shall file or cause to be filed all such instruments required to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Principal Component and Interest Component of the Basic Rent shall be outstanding.

Section 29.4. 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 29.5. Severability. If any provision of this Lease shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 29.6. 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 29.7. Execution of Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 29.8 Rights of Assignee. The Authority and the Tenant acknowledge that the Authority has assigned and transferred the Assigned Rights to Assignee pursuant to the Assignment, and as such the Assignee is a third party beneficiary of this Lease. The Tenant hereby consents to such assignment and transfer and agrees to maintain the register of assignments and acknowledge assignments when requested as provided in paragraph 10 of the Assignment. The Authority has not, however, delegated its duties or obligations hereunder to Assignee, and Assignee has not assumed any duties or obligations of the Authority imposed upon or undertaken by the Authority hereunder. Accordingly, all rights and interests expressed herein as running to the Authority by the terms hereof shall, from and after the execution and delivery hereof and so long as the obligations for the payment of Basic Rent hereunder remains outstanding and unpaid, run to the Assignee and shall remain enforceable by Assignee against Tenant without any action on the part of the Authority, and all duties and obligations expressed herein as running against the Authority shall be considered enforceable by Tenant against the Authority and not the Assignee. The Authority hereby directs the Tenant, and the Tenant hereby agrees, to pay to the Assignee all Basic Rent payable by the Tenant under Section 3.1, all prepayments pursuant to Section 3.6, all moneys from the Project Account pursuant to Section 6.4(h) and all amounts payable by the City under Article XXI. Whenever in this Lease any reference is made to the Authority and such reference concerns any Assigned Rights, such reference shall be deemed to refer to the Assignee.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

(SEAL)



KANSAS DEVELOPMENT FINANCE
AUTHORITY

By: Rebecca Floyd
Name: Rebecca Floyd
Title: Executive Vice President

ATTEST:

James E. MacMurray
Name: James E. MacMurray
Title: Assistant Secretary

ACKNOWLEDGMENT

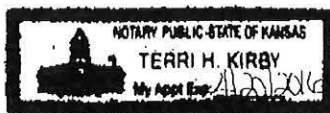
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED that on this 27th day of December, 2015, before me, a notary public in and for said County and State, came Rebecca E. Floyd, Executive Vice President of the Kansas Development Finance Authority and James E. MacMurray, Assistant Secretary of said Kansas Development Finance Authority, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said Kansas Development Finance Authority, and such persons duly acknowledged the execution of the same to be the act and deed of said Kansas Development Finance Authority.

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

Terri H. Kirby
Notary Public in and for said County and State

My Appointment Expires: April 20, 2016



STATE OF KANSAS -
DEPARTMENT OF ADMINISTRATION

By: Sarah L. Shipman
Name: Sarah L. Shipman
Title: Acting Secretary of Administration

(SEAL)

ACKNOWLEDGMENT

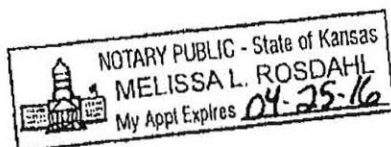
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED that on this 23rd day of December, 2015, before me, a notary public in and for said County and State, came Sarah L. Shipman, Acting Secretary of Administration of the State of Kansas, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said State agency.

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

Melissa L. Rosdahl
Notary Public in and for said County and State

My Appointment Expires: 04-25-16



APPROVED BY THE SECRETARY OF ADMINISTRATION, STATE OF KANSAS
PURSUANT TO K.S.A. 75-3739(l).

STATE OF KANSAS -
DEPARTMENT OF ADMINISTRATION

By:

Sarah L. Shipman

Sarah L. Shipman

Acting Secretary of Administration

(SEAL)

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

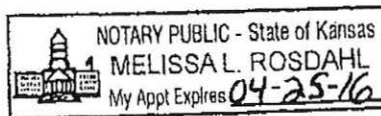
BE IT REMEMBERED that on this 23rd day of December, 2015, before me, a notary public in and for said County and State, came Sarah L. Shipman, Acting Secretary of Administration - State of Kansas, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said State agency.

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

Melissa L. Rosdahl

Notary Public in and for said County and State

My Appointment Expires: 04-25-16



SCHEDULE I

**SCHEDULE I TO THE LEASE DATED AS OF DECEMBER 29,
2015 BY AND BETWEEN SAID KANSAS DEVELOPMENT
FINANCE AUTHORITY AND THE STATE OF
KANSAS - DEPARTMENT OF ADMINISTRATION.**

(a) The following described real estate located in Shawnee, County, Kansas, to-wit (collectively, the "**Landon Site**"):

A tract of land in the Southeast Quarter of Section 31, Township 11 South, Range 16 East of the 6th P.M., in the City of Topeka, Shawnee County, Kansas, and described as follows: All of Lots 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, and 312, on Jackson Street, (Original Town) in the City of Topeka, Shawnee County, Kansas; and the Northerly one-half of alley lying Southerly of and adjacent to Lot 312 as vacated by Ordinance No. 3009 dated October 6, 1909, and pursuant to Ordinance 3021, dated November 19, 1909, and A.T.&S.F. Contract No. 25487 filed with Register of Deeds, Shawnee County, March 15, 1982, at 1:48 p.m. in Book 2160, Page 172.

(b) All buildings, structures, improvements, furnishings and equipment now or hereafter acquired, constructed, located or installed on the aforescribed real property.

The property described in paragraphs (a) and (b) of this Schedule I together constituting the "**Landon Facilities**" as referred to in said Site Lease, Lease and Assignment.

SCHEDULE II

**SCHEDULE II TO THE LEASE DATED AS OF
DECEMBER 29, 2015 BY AND BETWEEN SAID KANSAS
DEVELOPMENT FINANCE AUTHORITY AND THE
STATE OF KANSAS - DEPARTMENT OF
ADMINISTRATION.**

ENERGY CENTER PROJECT SITE

The following described real estate located in Shawnee, County, Kansas, to-wit (the
"Project Site"):

Lots 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238 and 240, Van Buren Street, in
the City of Topeka, Shawnee County, Kansas.

SCHEDULE III

**SCHEDULE III TO THE LEASE DATED AS OF
DECEMBER 29, 2015, BY AND BETWEEN SAID KANSAS
DEVELOPMENT FINANCE AUTHORITY AND THE
STATE OF KANSAS - DEPARTMENT OF
ADMINISTRATION.**

<u>Basic Rent</u> <u>Payment Date</u>	<u>Principal</u> <u>Component</u>	<u>Interest</u> <u>Component</u>	<u>Total</u> <u>Basic Rent</u>
March 15, 2016	\$ 0	\$ 81,303.11	\$ 81,303.11
September 15, 2016	0	192,560.00	192,560.00
March 15, 2017	937,914	192,560.00	1,130,474.00
September 15, 2017	0	181,680.20	181,680.20
March 15, 2018	959,674	181,680.20	1,141,354.20
September 15, 2018	0	170,547.98	170,547.98
March 15, 2019	981,938	170,547.98	1,152,485.98
September 15, 2019	0	159,157.50	159,157.50
March 15, 2020	1,004,719	159,157.50	1,163,876.50
September 15, 2020	0	147,502.76	147,502.76
March 15, 2021	1,028,029	147,502.76	1,175,531.76
September 15, 2021	0	135,577.62	135,577.62
March 15, 2022	1,051,879	135,577.62	1,187,456.62
September 15, 2022	0	123,375.83	123,375.83
March 15, 2023	1,076,283	123,375.83	1,199,658.83
September 15, 2023	0	110,890.94	110,890.94
March 15, 2024	1,101,252	110,890.94	1,212,142.94
September 15, 2024	0	98,116.42	98,116.42
March 15, 2025	1,126,801	98,116.42	1,224,917.42
September 15, 2025	0	85,045.53	85,045.53
March 15, 2026	1,152,943	85,045.53	1,237,988.53
September 15, 2026	0	71,671.39	71,671.39
March 15, 2027	1,179,691	71,671.39	1,251,362.39
September 15, 2027	0	57,986.97	57,986.97
March 15, 2028	1,207,060	57,986.97	1,265,046.97
September 15, 2028	0	43,985.08	43,985.08
March 15, 2029	1,235,064	43,985.08	1,279,049.08
September 15, 2029	0	29,658.33	29,658.33
March 15, 2030	1,263,717	29,658.33	1,293,375.33
September 15, 2030	0	14,999.22	14,999.22
March 15, 2031	1,293,036	14,999.22	1,308,035.22

EXHIBIT A

(Form of Requisition for Costs of Issuance)

_____, 20____
Requisition No. _____

To: _____

_____, _____
Attention: _____

The undersigned hereby requests that the amount listed below be paid from the Costs of Issuance Account to the following payee for Project Costs as described in subparagraph (d) of the definition thereof in the Lease. The amount indicated is justly due and owing and has not been the subject of another requisition which was paid and is a proper expense payable from the Costs of Issuance Account.

Accordingly, you are hereby instructed to disburse the amount of _____
_____ Dollars (\$) by check payable to _____
_____ in payment of Invoice No. _____
_____. Please deliver the check to: _____.

The above is in payment for _____
_____.

By: _____
Authorized District Representative

Attachment (invoice(s))

[Approved for Payment:

_____, Assignee

By: _____
Authorized Signature]

EXHIBIT B

(Form of Energy Center Project Requisition Certificate - General)

_____, 20____
Requisition No. _____

To: _____

_____, _____
Attention: _____

I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the acquisition, construction, furnishing and equipping of the Project, have been properly incurred and are a proper charge against the Construction Fund, and have been paid by or are justly due to the persons whose names and addresses are stated below, have not been the basis of any previous requisition from the Project Account, and that such amounts are subject to capitalization for Federal income tax purposes to the extent required under Rev. Proc. 82 26; and (ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, construction, furnishing and equipping of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

Accordingly, you are hereby instructed to disburse the amount of _____ Dollars (\$_____) by check payable to _____ in payment of Invoice No. _____. Please deliver the check to: _____.

The above is in payment for _____
_____.

By: _____
Authorized Tenant Representative

Attachment (invoice(s)/cancelled checks)

[Approved for Payment:

_____, Assignee

By: _____
Authorized Signature]

THE STATE OF KANSAS
CONSTRUCTION CONTRACT

(For use when a single contract is awarded for the project as a whole, as authorized by K.S.A. 75-3741(b) as amended).

1. This Contract is made this December 21, 2015 by and between the Department of Administration, Topeka, Kansas representing the State of Kansas and hereinafter referred to as the first party, and McCarthy Building Companies, Inc., 10601 Mission Road, Suite 220, Leawood, Kansas, 66206 hereinafter referred to as the second party.

2. For and in consideration of the payments and agreements hereinafter mentioned, which are to be made and performed by the first party, the second party hereby agrees and contracts with the first party to commence and complete the construction described as follows:

- (a) Project No. EVT0003634
(b) Title/Description: New Energy and Service Center
(c) Location Topeka, Kansas

hereinafter called the Project for the sum of:

Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)

Revised Final Base Bid\$16,602,166.00

Accepted Value Engineering Items..... <\$72,259.00> Best and Final Deduct.....<\$97,741.00>

and all extra work in connection therewith, under the terms as stated in the Contract Document; and at the second party's own cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Contract Documents, prepared by the Project Architect (hereinafter referred to as the Architect/Engineer) or any designee of the Secretary of Administration who is vested with the authority and responsibility of the Architect/Engineer for this project.

The second party agrees to meet the following completion date: **360 Calendar Days from Formal Notice to Proceed.**

Liquidated damages in the amount of **\$ 250.00** per day will be assessed if the project is not completed as called for in the specifications.

3. For the purposes of this Contract, the term Contract Documents shall include the following:

- | | |
|---|--|
| (a) Notice to Bidders | (h) The Specifications |
| (b) Instruction to Bidders | (i) Drawings, maps, plans, etc., prepared by the Architect/Engineer or the designee of the Secretary of Administration |
| (c) The Bid Form | (j) Any duly issued addenda |
| (d) Contractor's Performance Bond | (k) Any duly executed Contract Change Orders |
| (e) Contractor's Public Works Bond to the State | |
| (f) General Conditions of the Contract | |
| (g) Supplemental General Conditions | |

It is hereby further agreed by the parties that the Contract Documents are intended to be complementary, so that any work included in one portion of the Contract Documents which is not included in another portion, should be executed by the second party as though the work was described in both portions.

4. The second party hereby agrees to use the services of the following subcontractors on this project:

- (a) Electrical subcontractor:
(name) Torgeson Electric Company
(address) 3545 SW 6th Ave., Topeka, Kansas, 66606

- (b) Mechanical subcontractor:
(name) Central Mechanical Construction Co.
(address) 631 Pecan Circle, Manhattan, Kansas 66506

(c) Additional subcontractors, if any designated to perform any project alternates required by the Contract Documents which are listed in the Bid Proposal and which would change for (a) or (b) above:

- (name) N/A
(address) N/A
(name) N/A
(address) N/A

The second party also agrees that no change or substitution may be made in the list of subcontractors without prior approval of the Secretary of Administration.

5. This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas.

6. The second party agrees:

(a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and not to discriminate against any person who performs work hereunder, because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin or ancestry, or age;

(b) to include in all solicitations or advertisements for employees, the phrase equal opportunity employer;

(c) to comply with the reporting requirements set out in K.S.A. 44-1031 and K.S.A. 44-1116;

(d) to include these provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor;

(e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation or such acts by the Kansas Human Rights Commission it shall constitute a breach of the contract and the contract may be canceled, terminated or suspended in whole or in part by the State of Kansas. Parties to this contract understand that subsections (b) through (e) of the paragraph are not applicable to a party who employs fewer than four employees or whose contract with this agency of the Kansas state government totals less than \$5,000 during the fiscal year.

7. Acceptance of Contract. This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been rendered, and until funds for the contract have been encumbered.

8. Arbitration, Damages, Warranties. Notwithstanding any language to the contrary, no interpretation of this contract shall be allowed to find the state or any agency thereof has agreed to binding arbitration, the payment of damages or penalties upon the occurrence of a contingency, or to permit disclaimer of any or all warranties.

9. Termination Due to Lack of Funding Appropriation. If appropriated funds are withdrawn from the project through legislative action and sufficient funds are not available to continue the function performed in this agreement or pay for the charges hereunder, the first party may terminate this agreement. The first party agrees to give written notice of termination to the second party at least 30 days in advance of termination. First party will pay to the second party all regular contractual payments due for work incurred prior to termination. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the first party.

10. Disclaimer of Liability. Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor for any liability whatsoever.

11. Representative's Authority to Contract. By signing this document, the representative of the second party thereby represents that such person is duly authorized by the second party to execute this document on behalf of the second party and that the second party agrees to be bound by the provisions thereof.

12. Terms Herein Controlling Provisions. It is expressly agreed that the terms of each and every provision in this contract shall prevail and control over the terms of any other conflicting provision in any other document relating to this agreement.

13. The second party binds itself, its partners, heirs, executors, successors, assigns and legal representatives to all covenants of this agreement.

14. The second party shall not assign, sublet or transfer any interest in this agreement without the written consent of the Secretary of Administration.

15. The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.

In order to expedite the processing of this agreement, the parties mutually agree to the simultaneous execution of a copy of this document by all parties and persons mentioned below. After the execution of their copy of the agreement, the individuals shall submit them to the State of Kansas, Division of Purchases, for assembly and may make a copy for their files if they wish. Upon receipt of all executed copies, and the submittal of the required bonds and insurance certificates, the Division of Purchases shall date and assemble the copies and it shall constitute a binding agreement as of the date of assembly. The assembled copies shall be retained in the Division of Purchases, and a fully-executed set of contracts shall be delivered to the contractor and state agency. It is further agreed that if any individual wishes to change any part of the agreement, they shall notify the Division of Purchases, who shall prepare a new agreement and resubmit it to all parties and persons mentioned below for their signatures and processing as mentioned above.

Signed this EVT0003634 by the respective parties as follows:

STATE OF KANSAS, FIRST PARTY

SECOND PARTY

By: Department of Administration
State Agency

By: McCarthy Building Companies, Inc.
Company Name

Sarah L. Thompson
Head of State Agency

A. John Buescher
Authorized Signature

Wayne J. O'Dell
Director of Purchases

43-0399290
FEIN

APPROVED: Maury M. Green
Director of Facilities and Property Management

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DIVISION OF PURCHASES

ATTACHMENT A

To The Construction Contract for EVT0003634

Between the State of Kansas and McCarthy Building Companies Inc.

For The Construction Of The New Energy and Service Center

Changes to Document D – General Conditions of the Contract

Article 12 – Changes In Work

The parties have agreed to a change to Paragraph D.1, and specifically the overhead, profit, and fee chart. The amount of Overhead that will be allowed to the contractor on work performed by other than his own forces shall be revised from 0% to 5%.

Article 35 – General Guarantee

The parties have agreed that substantial completion is when construction is complete and the State is using the new Energy and Service Center for its beneficial use. Punch-list items of work shall follow and retainage will be held for completion of the punch-list items of work.

Miscellaneous Clarifications

Allowance for Bracing and Support of Westar Duct Banks

The State recognizes the \$50,000.00 allowance that the contractor included in their bid day proposal. The parties have agreed that the contractor shall provide pricing to the State for each of the three duct bank bracing and support scopes of work prior to construction. The State will review and provide approval of the pricing prior to the contractor performing the work.

Site Remediation

The parties have agreed to work together in the event of any required site remediation. While the contract has provisions for the earthwork operations required to excavate and backfill for the building and parking lot areas, both parties realize that the potential for additional site remediation exists. In the event that additional depth excavation, removal of materials and subsequent backfill is required, the State will utilize a hazardous waste fund for payment to the contractor. The contractor shall employ the services of Blackstone Environmental (of Topeka, Kansas) and Geosource (of Topeka, Kansas) during the removal of additional materials outside the contract, as well as the subsequent backfill and the required compactions. Blackstone Environmental shall observe and document the remediation work, and Geosource shall observe and document the backfill operations.

Final Clarifications By McCarthy Building Companies, Inc.

1. Unforeseen conditions, conflicts not directly indicated on the documents is not included in this proposal. Please refer to the Unit Prices provided on the bid form if these issues are encountered.
2. We plan to use the permanent system for temporary cooling during construction.
3. We have included utility consumption for the construction of the Building, however once the chillers are operational all utility consumption will become responsibility of the State.
4. Specification Section 10140, 2.3, B calls out exterior cast plaques at the monument sign. We have not found any monument signs on the plans, therefore we have not included any of this scope in our proposal.
5. Unclassified earth and rock excavation is based on the interpretation of the core samples. Any materials above & beyond that interpretation will be based on pricing provided on the bid form.
6. The parties have agreed to a change to Paragraph D.1, and specifically the overhead, profit, and fee chart. The amount of Overhead that will be allowed to the contractor on work performed by other than his own forces shall be revised from 0% to 5%.
7. The initial fill of the fuel & oil tanks are assumed to be the responsibility of the State of Kansas. We have included refueling of these tanks for work associated with our start-up and testing.
8. We have assumed that the existing utility plant has ample capacity to take the relocated chillers off-line without having to provide make-up capacity from temporary sources.
9. Costs for extending the warranty of the chillers that are relocated is not included.
10. The demolition of the Docking Building is not included.
11. Fire protection has not been indicated in the tunnel. Therefore, we have not included fire protection in the tunnel.
12. Through conversations with Westar we have identified 3 duct banks that require signification bracing and support. One was built in the 1930's and one approximately 30 years ago. We are including an allowance of \$50,000 for bracing and supporting these duct banks. We have included temporary supports of other site utilities for the tunnel construction.
13. The chemical treatment specified in section 238400 – Equipment and the clean and flush activities is included. The chemical treatment materials is to be provided by the State.
14. Resubmission of bid on Friday Dec. 18th, 2015 shall be valid until February 15th, 2016.
15. Special Inspection Testing, or any third party testing, is not included.
16. Per Letter sent to David Stueve on June 16th, 2015 – The following VE items have been accepted: #1, #2, #3a, #3b, #3c, #4, and #7.
17. Removal and replacement of Trees, Plants, Grass, Pavers, and Stone Curb to be BY OWNER, as the Landscape scope of work is BY OWNER.

18. Specification Sections to be BY OWNER (Supply and Install):

- a. 06 4023 - Interior Architectural Woodwork
- b. 10 2800 - Toilet, Bath and Laundry Accessories
- c. 10 4416 - Fire Extinguishers
- d. 10 5300 - Lockers
- e. 12 2413 - Roller Window Shades f.
329200 - Turf and Grasses
- g. 329300 - Plants

Signed this Attachment A for EVT0003634 by the respective parties as follows:

State of Kansas, First Party

Second Party

By: Department of Administration

By: McCarthy Building Companies, Inc.

Head of State Agency

Authorized Signature

Director of Purchases

A. John Broscher

Director of OFPM

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DIVISION OF PURCHASES

PERFORMANCE BONDFederal Insurance Company, 82393757
Travelers Casualty and Surety Company
of America, 106329979**KNOW ALL PERSONS BY THESE PRESENTS:**

That we, McCarthy Building Companies, Inc. of Leawood, Kansas as Principal, hereinafter
called Contractor, and Federal Insurance Company
Travelers Casualty and Surety Company of America Company, a corporation organized
under the laws of the State of IN, CT, with its home office in the city and state
of Warren, NJ, Hartford, CT, as Surety and hereinafter referred to as Surety, are held and firmly

bound unto the State of Kansas, as Obligee, hereinafter called the State, in the sum of

Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)

dollars for the payment of which sum we as Contractor and Surety bind ourselves and our legal
representatives and successors, jointly and severally, by this instrument.

WHEREAS, Contractor has by written agreement dated, December 21, 2015 entered into a contract with the
State of Kansas for:

New Energy and Service Center

Department of Administration

Topeka, Kansas

in accordance with plans and specifications set forth in the State of Kansas, project # EVT0003634 and
which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

IT IS THEREFORE the condition of the above obligation that whenever Contractor shall be in default
and is declared by the State to be in default under the contract, the State having performed the State's
obligations under the Contract, the Surety will promptly remedy the default by completion of the Contract in
accordance with the terms and conditions of the Contract.

If Surety does not promptly remedy the default, Surety shall be liable to the State for funds sufficient to
pay the cost of completion less the balance of the contract price. Balance of contract price shall mean total
amount payable by State to Contractor under the contract, less amounts properly paid to Contractor by State.
If Contractor faithfully, promptly and accurately executes the Contract and complies with all the conditions
thereof, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this 31st day of December, 2015.

Principal McCarthy Building Companies, Inc.

By [Signature]
(Title) A. John Buchner, President - Central Division

10601 Mission Road, Suite 220

Address Leawood, Kansas 66206

By [Signature]
(Attorney-in-Fact) Susan A. Welsh

Federal Insurance Company

Surety Travelers Casualty and Surety Company of America

15 Mountain View Road, Warren, NJ 07059

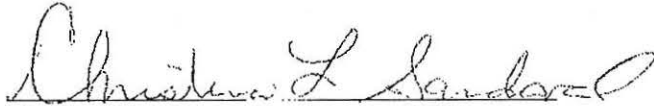
Address One Tower Square, Hartford, CT 06183

ACKNOWLEDGEMENT BY SURETY

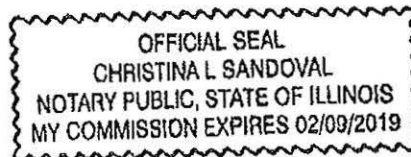
STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of December, 2015, before me, Christina L. Sandoval, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for Federal Insurance Company and Travelers Casualty and Surety Company of America and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Cook





**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**


**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

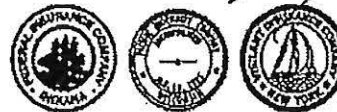
Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Marla K. Casafsky, Debra J. Doyle, Derek J. Elston, Jennifer L. Jakaitis, Judith A. Lucky-Ertimov, James B. McTaggart, Linda M. Napolillo, Sandra M. Nowak, Diane M. O'Leary, Christina L. Sandoval, Christopher P. Troha, Susan A. Welsh and Sandra M. Winsted of Chicago, Illinois**

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **19th** day of **October, 2015**.


Dawn M. Chloros, Assistant Secretary


David B. Norris, Jr., Vice President



STATE OF NEW JERSEY

55.

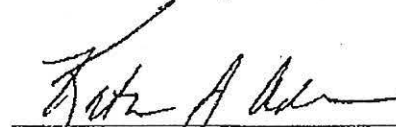
County of Somerset

On this **19th** day of **October, 2015** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2019


Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"Except as otherwise provided in these By-Laws or by law or as otherwise directed by the Board of Directors, the President or any Vice President shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the President or any Vice President designated by the Board of Directors may authorize any other officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this **December 31, 2015**




Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229936

Certificate No. 006440701

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Debra J. Doyle, Diane M. O'Leary, James B. McTaggart, Jennifer L. Jakaitis, Judith A. Lucky-Estimov, Sandra M. Winsted, Sandra M. Nowak, Susan A. Welsh, and Christina I. Sandoval

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of September, 2015

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 17th day of September, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

CONTRACTOR'S PUBLIC WORKS BOND TO THE STATE
(PURSUANT to K.S.A. 60-1111 as amended)

Federal Insurance Company, 82393757
Travelers Casualty and Surety Company
of America, 106329979

KNOW ALL PERSONS BY THESE PRESENTS: McCarthy Building Companies, Inc., 10601 Mission Rd.,
Suite 220, Leawood, Kansas, 66206 as principal, and Federal Insurance Company
Travelers Casualty and Surety Company of America
as Surety, and held and firmly bound unto the STATE OF KANSAS, in the sum of:

Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)
lawful money of the United States, will and truly to be paid, to which payment we here bind ourselves, our
heirs, executors, administrators, successors or assigns, jointly and severally, firmly by these presents.
The condition of the above obligation is such that, whereas, the said McCarthy Building Companies, Inc.,
Leawood, Kansas, 66206 hereinafter called the contractor, has on December 21, 2015 entered into a contract
with the State of Kansas,

New Energy and Service Center

Department of Administration

Topeka, Kansas

in accordance with plans and specifications of Project No. EVT0003634 on file in the Department of
Administration, Office of Facilities and Property Management.

AND, NOW, THEREFORE, if the said contractor and all sub-contractors, if any, of said contractor shall pay all
indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in connection
with, or in or about the construction of said public building or making said public improvements, then the above
obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands this 31st day of December, 2015.

Principal McCarthy Building Companies, Inc.

By 

A. John Buecker, President (Central Div.)
Federal Insurance Company

Surety Travelers Casualty and Surety Company of America

By 

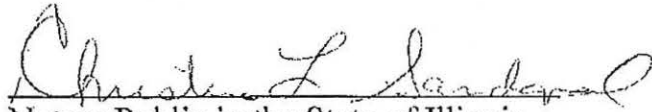
Susan A. Welsh, Attorney-in-Fact

ACKNOWLEDGEMENT BY SURETY

STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of December, 2015, before me, Christina L. Sandoval, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for Federal Insurance Company and Travelers Casualty and Surety Company of America and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Cook





**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

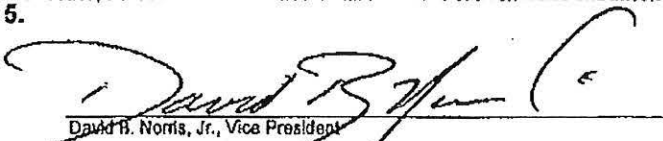
**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Marcia K. Cesafsky, Debra J. Doyle, Derek J. Elston, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, James B. McTaggart, Linda M. Napolillo, Sandra M. Nowak, Diane M. O'Leary, Christina L. Sandoval, Christopher P. Troha, Susan A. Welsh and Sandra M. Winsted of Chicago, Illinois

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 19th day of **October, 2015**.


Dawn M. Chloros, Assistant Secretary


David B. Norris, Jr., Vice President



STATE OF NEW JERSEY

ss.

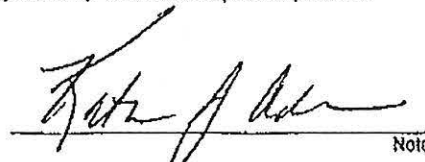
County of Somerset

On this 19th day of **October, 2015** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 18, 2019


Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**:

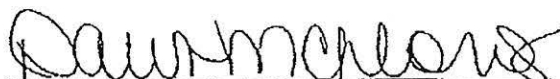
"Except as otherwise provided in these By-Laws or by law or as otherwise directed by the Board of Directors, the President or any Vice President shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the President or any Vice President designated by the Board of Directors may authorize any other officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this December 31, 2015




Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229936

Certificate No. 006440702

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Debra J. Doyle, Diane M. O'Leary, James B. McTaggart, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, Sandra M. Winsted, Sandra M. Nowak, Susan A. Welsh, and Christina I. Sandoval

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this
day of September, 2015.

17th

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: 

Robert L. Raney, Senior Vice President

On this the 17th day of September, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.




Marie C. Tetreault, Notary Public

CitePayUSA

Receipt

Date: 01/06/2016
Receipt Number: 199570
Card Number: #####8290
Transaction Number: 1321343086
Authorization Number: 00666Z
Court: Shawnee County District Court

Payor: Mccarthy Building Companies Inc (plaintiff)

Items Paid

Case	Citation	Description	Amount
2016-SB-000002		Statutory Bond	\$36.00

Amount:	\$36.00
Transaction Fee:	\$1.44
Payment Total:	\$37.44



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/27/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. St. Louis MO Office 8182 Maryland Ave. St. Louis, Mo. 63105 Attn: Sue Schwartz	CONTACT NAME:		
	PHONE (A/C, No, Ext): (314) 721-5100	FAX (A/C, No): (314) 719-5126	
INSURED McCarthy Building Companies, Inc. / Div. 01A 1341 N. Rock Hill Rd. St. Louis, MO 63124	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Arch Insurance Company		11150
	INSURER B: National Union Fire Ins Co of Pittsburgh		19445
	INSURER C:		
	INSURER D:		
	INSURER E:		
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 447970

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Per Project/Location Aggre GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		51PKG8897611	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALLOWED AUTOS <input type="checkbox"/> Hired AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			51PKG8897611	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			29157282	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/OWNER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	NTA	51WC10897511	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Master IXS
Job #003862.000; Kansas Energy & Service Center; Project No: EVT0003634; New Energy and Service Center, Building No. 17300-00038, Topeka, KS A-012651/TMA-1951
Kansas Energy and Service Center and Architect/Engineer are Included as Additional Insureds on the General Liability policy when required by written contract.

CERTIFICATE HOLDER

State of Kansas
Attn: George Steele
800 SW Jackson St., Suite 700
Topeka, KS 66612

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Catherine L. Steiner

© 1988-2014 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION – CERTIFICATE HOLDERS

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

447970

Re:

State of Kansas

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: McCarthy Building Companies, Inc. / Div. 01A

Policy Number: 51PKG8897611

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION -CERTIFICATE HOLDERS

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

447970

Schedule

Re: State of Kansas

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: McCarthy Building Companies, Inc. / Div. 01A

Policy Number: 51WCI8897511