

# **LEASE AGREEMENT**

The parties to this Lease Agreement (“Lease”) are U.S.D. 261 Haysville, Sedgwick County, (hereinafter “Landlord”) and Wichita State University, a state educational institution of Kansas (hereinafter “Tenant”). Tenant for the consideration set forth, does hereby lease from Landlord certain property subject to the terms and conditions as follows:

## **1. DESCRIPTION OF PROPERTY**

Property being legally described as follows:

- A. Former Haysville High School  
106 Stewart  
Haysville, Kansas 67060  
Described as Unit 106 and 8.62% undivided interest in common areas and facilities of Grand Lane condominium situated on lot 1 Grand Lane addition, a 23,300-square foot facility with multiple classrooms and offices including a parking lot.
- B. Property includes unless specifically excluded herein, all buildings and infrastructures of property including plumbing, heating and air conditioning, fixtures and equipment, sidewalks, parking lot, landscaping, and fencing, etc. and anything therein, which allows the property to function as a facility to be used and occupied for operating classes, student lounge, administrative offices, and other related educational activities.

## **2. TERM OF LEASE AND RIGHT OF ACCESS**

The term of this Lease shall start on the 1<sup>st</sup> day of July, 2018 (“Commencement Date”), and shall end on the 30<sup>th</sup> day of June 2020 (“Initial Term”). Provided Tenant is not in default of this Lease, the parties shall have the option, upon mutual agreement, to renew and extend the Lease Term hereof for periods of one (1) year each under the same terms and conditions as herein described (“Renewal Terms”) (collectively, the Initial Term and the Renewal Terms shall be referred to as “Lease Term”). The parties shall mutually agree to the renewal and extension of the Lease Term at least sixty (60) days prior to the end of the Initial Term or then-current Renewal Term and shall document such agreement in writing, signed by both parties, such agreement to be attached to this Lease and incorporated as if fully set forth herein in each instance.

## **3. OCCUPANCY**

The parties agree and understand that Tenant is entitled to access to the Property prior to the Commencement Date, except that such access shall be arranged with Landlord in advance, shall occur on a reasonable basis at reasonable times and days, and shall not in any way impede Landlord’s access to the Property. Such access is needed to allow Tenant to appropriately plan for the use of

the space, to assist in Tenant's installation of any personal property, fixtures or alterations, as approved by Landlord, and shall be subject to any code restrictions.

#### **4. LEASE PAYMENTS**

Tenant agrees to pay Landlord in equal monthly installments starting July 1, 2018, the sum of Ten Thousand Dollars (\$10,000.00) annually. The lease payments due hereunder, as aforesaid, shall be due and payable on the 1<sup>st</sup> day of each month through the Lease Term.

#### **5. REMEDIES FOR DEFAULT**

Tenant shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of default has been given by Landlord to Tenant. If the default cannot reasonably be cured within ten (10) days, Tenant shall not be in default if Tenant commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default. In the event of default by Tenant, Landlord may terminate this Lease and upon such termination this Lease shall cease and end.

Landlord shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of default has been given by Tenant to Landlord. If the default cannot reasonably be cured within ten (10) days, Landlord shall not be in default if Landlord commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default. In the event of default by Landlord, Tenant may terminate this Lease and upon such termination this Lease shall cease and end.

Tenant shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, or encumbrance or claim in with respect to the Property, title thereto or any interest therein.

#### **6. DUTIES OF THE LANDLORD**

Landlord agrees as follows:

- A. To permit and allow Tenant to peaceably, quietly and exclusively have, hold and enjoy the Property for the term stated, and any extensions or renewals thereof.
- B. To vacate any other tenants of the Property at the Commencement Date or at such time that Tenant begins work pursuant to Section 3 above, whichever is earlier.
- C. To pay for utility services (natural gas, electric, water/sewer) during the Lease Term.

- D. To provide janitorial services to the Property consistent with the requirements of Tenant's other facilities.
- E. To install sound baffling materials in the multi-purpose room (Room 15). Such materials will be from materials Landlord already has on hand. Landlord will not be required to purchase new materials to fulfill this requirement.
- F. To provide ceiling-mounted projectors and maintain them during the Lease Term.

## **7. DUTIES OF THE TENANT**

Tenant agrees as follows:

- A. To keep and maintain the Property in good and tenantable repair throughout the Lease Term.
- B. To provide maintenance per Tenant's normal procedures throughout the Lease Term.
- C. To make any physical alterations to the Property with written consent of Landlord.

## **8. INSURANCE AND INDEMNIFICATION**

- A. Tenant, as an educational institution of the State of Kansas, is subject to the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.* K.S.A. 75-6105 specifically provides that liability of claims within the scope of the act shall not exceed \$500,000.00. Accordingly, Tenant (and the State of Kansas) relies on the provisions of the Kansas Tort Claims Act and no liability insurance is maintained.
- B. Tenant, as an educational institution of the State of Kansas, does not maintain general property insurance, but is benefited by a comprehensive policy maintained by the Kansas Board of Regents, currently with Traveler's Insurance and with a deductible of \$250,000.00. Tenant, at its sole cost and expense, shall determine whether to maintain insurance for the amount of the deductible.
- C. To the extent permitted by Kansas law and without waiving any applicable immunities, defenses, limitations or obligations, Tenant shall indemnify and save and hold the Landlord harmless from any cost, expense or liability for damages to persons or property occurring in, upon or about the Property and which shall be occasioned by the possession and use of the Property by Tenant, or while Tenant is in possession of the Property under the terms of the negligence of the Tenant or by the Tenant's ordinary use and occupation of the Property.
- D. Landlord agrees to insure the Property and any Tenant property located in or on the Property.

## **9. REPAIR, MAINTENANCE AND COMPLIANCE**

- A. During the Lease Term, Landlord will keep, maintain, repair, and replace, as needed, the exterior of the Property, including the foundation, exterior walls, roof and any other structural part of the Property and perform any major or capital repairs or replacement of the HVAC systems, plumbing, electrical, mechanical and related fixtures and appliances. Landlord shall arrange for and ensure the completion of all repairs and replacement of any Property equipment, fixture, system or part that is under warranty. Landlord shall not be responsible for any damage done to the Property caused by the acts of Tenant, its employees, tenants, or guests.
- B. In order to assure prompt response to maintenance notifications, Landlord agrees to authorize Tenant to contract with a third party for maintenance repairs that are not corrected within three (3) days of notification. Landlord further authorizes Tenant to pay invoices for the maintenance repairs that remain unpaid thirty (30) days after their submittal to Landlord. Landlord authorizes Tenant to deduct the amount of the aforesaid payments from any rental payment due and owing.
- C. Interior repairs of damage caused by Tenant shall be paid by Tenant. Tenant will submit written requests for decoration and other remodeling items to Landlord for approval. Approved decoration or remodeling will be provided by Landlord and upon receipt of invoice, Tenant will reimburse Landlord for said decoration or remodeling costs.
- D. If Tenant's personal property kept on or in the Property is damaged as a result of Landlord's failure to fulfil its obligations hereunder, Landlord agrees to pay the costs to repair or replace Tenant's personal property, and to restore the Property to a condition not less than the condition at the time of initial lease signing.
- E. Landlord shall be responsible at its sole cost and expense to keep, maintain, alter and replace, if necessary, the Property so as to maintain compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et sq. (the "Act"), analogous state and local laws, and all rules and regulations promulgated to further the purpose of and to enforce the Act as such Act has been or shall be modified by Kansas statutes and rules and regulations of applicable state and/or local agencies. In addition to this obligation, Landlord shall remedy those deficiencies noted in the ADA Checklist, which is attached hereto and incorporated as if fully set forth herein, prior to the Commencement Date.

## **10. DESTRUCTION OF OR DAMAGE TO THE PREMISES**

- A. In the event the Property is rendered untenable by fire or other casualty, Tenant may, at its sole option, terminate this Lease, or any extension or renewal thereof, without further lease obligation whatsoever following such termination.

- B. In the event the improvements upon the Property are rendered untenable by fire or other casualty, the Landlord may, at its sole option, terminate this Lease, or any extension or renewal thereof, without further rent obligation whatsoever following such termination.

## **11. TERMINATION BY TENANT**

Tenant may terminate this Lease at any time upon giving written notice to Landlord. In the event such termination notice is delivered to Landlord, it shall be effective the earlier of one hundred eighty (180) days following the date such termination notice is received by Landlord or the end of Landlord's and Tenant's semesters.

Notwithstanding any other provision of this Lease, if funds anticipated for the continued fulfillment of this Lease are at any time not forthcoming, either through failure of the Legislature to appropriate funds specifically budgeted for this Lease or the discontinuance or material alteration of the program under which the funds were provided, then Tenant shall have the right to terminate this Lease by giving Landlord a reasonable notice specifying the reasons for such necessary termination.

The termination of this Lease pursuant to this Section shall not cause any penalty to be charged to Tenant. Any prepaid rent shall be returned to Tenant for the period following the termination date.

## **12. ASSIGNMENT**

This Lease or any interest of Tenant therein shall not be assignable nor shall the Property be sublet by Tenant without prior written approval from Landlord. Any attempt to so assign shall be null and void.

## **13. SEVERABILITY**

The invalidity or illegality of any provision shall not affect the remainder of the Lease.

## **14. BINDING EFFECT**

This Lease shall insure to the benefit of and be binding upon each of the parties hereto, their respective heirs, administrators, successors and assigns, and supersedes all previous agreements between the parties.

## **15. LEGISLATIVE CHANGE**

This Lease Agreement, and any extensions thereto or renewal hereof, or assignment of rights hereunder, is subject to change or termination by the Kansas Legislature.

**16. STATE OF KANSAS TERMS**

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Lease and made a part thereof

[signature page to follow]

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

**LANDLORD**  
USD 261 Haysville

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT**  
Wichita State University,  
a state educational institution of Kansas

By: \_\_\_\_\_  
Name: Anthony Vizinni  
Title: Provost and Senior Vice President

### CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.