ABILENE CITY COMMISSION - REGULAR MEETING AGENDA

ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET

November 23, 2020 - 4:00 pm

DUE TO COVID-19 AND SOCIAL DISTANCING WE ARE ENCOURAGING VIEWING ALL MEETINGS VIRTUALLY ON THE LIVE STREAMED CITY OF ABILENE'S YOUTUBE PAGE AT https://www.youtube.com/channel/UCNURrU0ueP6_dRpHYu1wJEg

1. Call to Order
2. Roll Call: ____ Ostermann ____Rein ____ Marshall ____ Shafer ____Witt
3. Pledge of Allegiance

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.)*

4. Agenda approval for the November 23, 2020 City Commission meeting.
5. Meeting minutes: November 9, 2020 regular meeting.

Public Comments and Communications

6. Persons who wish to address the City Commission may do so when called upon by the Mayor.

Old and New Business

7. Consider Resolution 112320-3, A RESOLUTION CONCERNING THE EMPLOYEE BENEFITS PLAN FOR THE CITY OF ABILENE, KANSAS.
8. Consider Resolution 112320-1, A RESOLUTION PROVIDING FOR AN ADJUSTMENT TO THE PAY PLAN OF THE CITY OF ABILENE, KANSAS, TO ENSURE APPROPRIATE COMPENSATION FOR CITY EMPLOYEES AS COMPARED WITH THE COMPARABLE LABOR MARKET.
9. Consider Resolution 112320-2, A RESOLUTION FINDING THAT THE STRUCTURES LOCATED AT 1015 N. MULBERRY ST., ABILENE, KANSAS ARE UNSAFE AND DANGEROUS AND DIRECTING THE STRUCTURES TO BE REPAIRED OR REMOVED AND THE PREMISES MADE SAFE AND SECURE.
10. Public hearing for the issuance of IRB's for the Narayan project.
11. Consider Ordinance 20-3395, AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.
12. Consider Ordinance 20-3394, AN ORDINANCE AMENDING CHAPTER 7, SECTIONS 7-505, 7-901, AND 7-902 OF THE CITY CODE OF THE CITY OF ABILENE PERTAINING TO SEWER AND WATER RATES WITHIN THE CITY OF ABILENE, KANSAS; AND REPEALING EXISTING SECTIONS 7-505, 7-901 AND 7-902.

13. Consider the renewal of our City Engineer contract with Olsson & Associates.
14. Discussion on the process for the City Manager search with possible action.
15. Discussion on moving to virtual meetings with possible action.

<u>Reports</u>

16. City Manager reports.

<u>Adjournment</u>

17. Consider a motion to adjourn the November 23, 2020 City Commission meeting.

<u>Future Meeting Reminders:</u>

- Study session meeting, December 7 at 4 pm
- City Commission meeting, December 14 at 4pm

Abilene City Commission Meeting Minutes
Abilene Public Library – 209 NW Fourth Street
November 9, 2020 @ 4:00 p.m.
Abilene, Kansas

1. **Call to Order**

2. **Roll Call** – City Commission Present: Mayor Ostermann, Commissioners Rein, Marshall, Shafer, and Witt.

Staff Present: City Manager Foltz, City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Police Chief Hatter and Public Works Director Schrader.

3. **Pledge of Allegiance**

Consent Agenda

4. **Agenda Approval for the November 9, 2020 City Commission Meeting**
5. **Meeting minutes: October 26, 2020 Regular Meeting**
6. **Approval an agreement with Olsson & Associates for the Airport Environmental Assessment.**

Motion by Commissioner Witt, seconded by Commissioner Marshall to approve the Consent Agenda as presented. Roll call vote: Witt YES, Shafer YES, Marshall YES, Rein YES, Ostermann YES. Motion carried unanimously 5-0.

Public Comments and Communications

7. **Persons who wish to address the City Commission may do so when called upon by the Mayor.**

There were no public comments or communications.

Old and New Business

8. **Consider approval of master agreement work order for Rogers Street with Olsson & Associates in the amount of $38,460.00.**

Motion by Commissioner Rein, seconded by Commissioner Marshall to approve the master agreement work order for Rogers Street with Olsson & Associates in the amount of $38,460.00. Roll call vote: Shafer YES, Marshall YES, Rein YES, Ostermann YES, Witt YES. Motion carried unanimously 5-0.

9. **Consider approval of the purchase of police body cameras in the amount of $26,057.74 from Axon Enterprises.**

Motion by Commissioner Marshall, seconded by Commission Witt, to approve the purchase of the police body cameras in the amount of $26,057.74 from Axon Enterprises. Roll call vote: Marshall YES, Rein YES, Ostermann YES, Witt YES, Shafer YES. Motion carried unanimously 5-0.

10. Executive session: I move the City commission recess into executive session for 10 minutes based upon the need to discuss personnel matters of non-elected personnel pursuant to K.S.A. 75-34319(B)(1). The open meeting will resume in this room at 4:18 PM.

Motion by Commission Rein, 2nd by Commissioner Marshall to move into **executive session for 10 minutes based upon the need to discuss personnel matters of non-elected personnel pursuant to K.S.A. 75-34319(B)(1). The open meeting will resume in this room at 4:18.** Roll call vote: Rein YES, Ostermann YES, Witt YES, Shafer YES, Marshall YES. Motion carried unanimously 5-0.

Reports

11. City Manager reports

I continue to meet with the county weekly regarding COVID 19. We have two employees in quarantine.

We are waiting on the housing grant information with Prairie Fire.

Annual evaluations are taking place.

Due to COVID 19 we are working on a plan for the Mayors Christmas tree lighting in Little Ike Park.

Adjournment

12. Consideration of a motion to adjourn the November 9, 2020 City Commission meeting.

Motion by Commissioner Marshall, seconded by Commissioner Rein to adjourn at 4:20 p.m. Roll call vote: Witt YES, Shafer YES, Marshall YES, Rein YES, Ostermann YES. Motion carried unanimously 5-0.

(Seal)

____

Chris Ostermann, Mayor

ATTEST:

____

Penny L. Soukup, CMC
City Clerk

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 11/23/2020

Originating Department	Prepared By:	Approved For Agenda By: *(Office Use Only)*
Administration	Penny Soukup	JF

AGENDA ITEM HEADING:

Consider the 2021 employee benefits plan

BACKGROUND:

The insurance committee has met with Julie Yarmer from Freedom Claims Inc. to review the renewal and a survey was conducted with employees. It is the recommendation of the insurance committee, which consisted of representation from each department, that we move forward with the attached renewal plan for the City employees.

We have prepared resolution 112320-3 seeking the commission's approval for the budgeted 2021 employee benefits plan.

FISCAL NOTE:

Included in the 2021 adopted budget.

COMMISSION ACTION:

Consider approval of resolution number 112320-3

RESOLUTION NO. 112320-3

A RESOLUTION CONCERNING THE EMPLOYEE BENEFITS PLAN FOR THE CITY OF ABILENE, KANSAS

WHEREAS, the City Commission has adopted an Employee Benefits Plan ("Plan") providing for health insurance for employees of the City of Abilene;

WHEREAS, the City Commission recognizes the value of adopting a Plan that provides for the well being of employees and also promotes the recruitment and retention of employees;

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. <u>Employee Benefits Plan: Adopted</u>. That the Employee Benefits Plan, as prepared by Freedom Claims Management, Inc, shall be hereby adopted as provided in Attachments.

SECTION TWO. <u>Implementation</u>. The City Manager is hereby authorized to implement the Plan as provided in the approved Plan document and this Resolution as provided in applicable resolutions, ordinances and laws.

SECTION THREE. <u>Repeal</u>. Adoption of this Resolution supersedes and repeals all previous Plans adopted by the City of Abilene, Kansas.

SECTION FOUR. <u>Effective Date</u>. That the effects of this Resolution shall be in full force and effect as of January 1, 2021.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 23rd day of November, 2020.

CITY OF ABILENE, KANSAS

ATTEST:

____
Chris Ostermann, Mayor

____
Penny L. Soukup, CMC
City Clerk

Health Benefits Plan for the Employees

City of Abilene
Group Number: 911128
FreedomChoice Plan

Effective Date:	**January 1, 2021**	***FreedomChoice***	
Base Plan Claims Administrator **Base Plan: Financial Program** **Group Health Plan**		**Freedom Claims Management, Inc.** **Medical Expense Reimbursement Plan** **Current Carrier**	
Base Plan	**Amounts Paid By The Member**	↓	↓

Please direct questions to Freedom Claims Management, Inc. at 1-866-792-9151

Employee Deductible	Individual	$1,000	$2,000
Deductible on Calendar Year Basis	Family Limitation	$2,000	$4,000
Employee Cost Share Percentages AFTER Deductible		20%	40%
Out-of-Pocket Co-Insurance Maximum after Deductible	Individual	$1,000	$3,200
Before $6,350 Limit Reached	Family Limitation	$2,000	$6,400
Copays Paid by Member "Per Visit"	Primary Care MD	$20	Deductible
Other Services preformed subject to	Specialist Physician	$40	Deductible
Deductible. Deductible applies AFTER	Urgent Care Facility	$20	Deductible
Emergency Room Copayment made.	Emergency Room	$150	Deductible
	Chiropractor	$20	Deductible
Routine Preventive Care	Per Person	100% -Paid by Primary Carrier	Deductible
Covers Preventive Services recommended by the U.S. Preventive Task Force			
Outpatient Lab/ Radiology Expenses		100% to $200	
Routine Vision Exam (Limit one per Plan Year)		100%	Deductible
Massage Therapy Benefit	Limit one visit per month	Maximum allowed amount of $60 subject to $20 copay	
Prescription Drug Card Benefit		Retail Copays	Mail Order
Prescription drug services and	Generic Drugs	$15	37.50
administration provided by the current	Preferred Brand	$35	$125
carrier and Serve You, a Prescription	Non-Preferred Brand	$55	187.50
Management Company	Specialty Drugs	Deductible/Co-insurance. 30 days supply only.	

Please use participating network physicians and hospitals that participate in your current carrier network in order to maximize benefits and reimbursements. Certain services require Pre-Certification. Please have your provider contact current carrier to maximize Benefit reimbursement.

SAVE $250 ON YOUR DEDUCTIBLE BY COMPLETING YOUR WELLNESS FORM!*

Preventive Services Covered at 100%

Services listed below are considered "included, but not limited to…".
Age, gender, and risk factors may apply depending on covered service.

Dental Services (every 6 months)
- ***Routine Exams**
- ***Cleanings**
- Fluoride Treatments
- ***Bitewing X-rays**

Immunizations
- ***Influenza**
- DTaP
- Pneumococcal
- HPV
- Herpes Zoster
- Hepatitis A & B
- Preventive Childhood Immunizations

Diagnostic Screenings
- ***Cholesterol**
- HIV
- Colorectoal Cancer
- Syphyllis
- Abdominal Aortic Aneurysm
- High Blood Pressure
- ***PSA**

Counseling Screenings
- Obesity
- Osteoporosis
- Alcohol Misuse
- Tobacco Use
- Diabetes
- STDs

Medications
- Aspirin
- Vitamin D Supplements
- Tobacco Cessation Medications
- Certain Cancer Prevention Medications
- Contraceptive medications and two visits per year for patient education and counseling on contraception

Preventive Yearly Exams
- ***Well Man exam**
- ***Routine Vision Exam**
- ***Well Women exam to include preventive cervical cancer screenings**

Other Services
- ***Screening Mammography**
- Breast Pumps, supplies, counseling and interventions

ID CARDS: You will have two ID Cards. Present both of them to your providers and pharmacies. Current carrier will review the claim first and apply the PPO discount. Freedom Claims Management, Inc. will coordinate your reimbursement as secondary payor.

		Employer	Employee
Employee Rates per month	Single	$489.05	$171.83
	Empl/Spouse	$877.73	$308.39
	Empl/Child(ren)	$771.25	$270.98
	Family	$1,274.72	$447.88

11/18/2020

Health Benefits Plan for the Employees

City of Abilene
Group Number: 911128
Health Savings Account

Effective Date:	**January 1, 2021**	***FreedomChoice***	
	Base Plan Claims Administrator **Base Plan: Financial Program** **Group Health Plan**	**Freedom Claims Management, Inc.** **Medical Expense Reimbursement Plan** **Current Carrier**	
Base Plan	**Amounts Paid By The Member**	↓	↓

Please direct questions to Freedom Claims Management, Inc. at 1-866-792-9151

Employee Deductible	Individual	$2,000	$2,000
Deductible on Calendar Year Basis	Family Limitation	$4,000	$4,000
Employee Cost Share Percentages <u>AFTER</u> Deductible		20%	40%
Out-of-Pocket Co-Insurance Maximum after Deductible	Individual	$1,000	$3,200
Before $6,350 Limit Reached	Family Limitation	$2,000	$6,400
Copays Paid by Member "Per Visit"	Primary Care MD	Deductible	Deductible
	Specialist Physician	Deductible	Deductible
Other Services preformed subject to Deductible.	Urgent Care Facility	Deductible	Deductible
	Emergency Room	Deductible	Deductible
	Chiropractor	Deductible	Deductible
Routine Preventive Care	Per Person	100% -Paid by Primary Carrier	Deductible
Covers Preventive Services recommended by the U.S. Preventive Task Force			
Routine Vision Exam (Limit one per Plan Year)		100%	Deductible
Massage Therapy Benefit	Limit one visit per month	Maximum allowed amount of $60 subject to deductible and co-insurance	
Prescription Drug Card Benefit		<u>Retail Copays</u>	<u>Mail Order</u>
Prescription drug services and administration provided by the current carrier and Serve You, a Prescription Management Company	Generic Drugs	Deductible	Deductible
	Preferred Brand	Deductible	Deductible
	Non-Preferred Brand	Deductible	Deductible
	Specialty Drugs	Deductible/Co-insurance. 30 days supply only.	

Please use participating network physicians and hospitals that participate in your current carrier network in order to maximize benefits and reimbursements. Certain services require <u>Pre-Certification.</u> Please have your provider contact current carrier to maximize Benefit reimbursement.

SAVE $250 ON YOUR DEDUCTIBLE BY COMPLETING YOUR WELLNESS FORM!*

Preventive Services Covered at 100%

Services listed below are considered "included, but not limited to…".
Age, gender, and risk factors may apply depending on covered service.

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- ***Routine Exams**
- ***Cleanings**
- Fluoride Treatments
- ***Bitewing X-rays**

<u>Immunizations</u>
- ***Influenza**
- DTaP
- Pneumococcal
- HPV
- Herpes Zoster
- Hepatitis A & B
- Preventive Childhood Immunizations

<u>Diagnostic Screenings</u>
- ***Cholesterol**
- HIV
- Colorectoal Cancer
- Syphyllis
- Abdominal Aortic Aneurysm
- High Blood Pressure
- ***PSA**

<u>Counseling Screenings</u>
- Obesity
- Osteoporosis
- Alcohol Misuse
- Tobacco Use
- Diabetes
- STDs

<u>Medications</u>
- Aspirin
- Vitamin D Supplements
- Tobacco Cessation Medications
- Certain Cancer Prevention Medications
- Contraceptive medications and two visits per year for patient education and counseling on contraception

<u>Preventive Yearly Exams</u>
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<u>Other Services</u>
- ***Screening Mammography**
- Breast Pumps, supplies, counseling and interventions

ID CARDS: You will have two ID Cards. Present both of them to your providers and pharmacies. Current carrier will review the claim first and apply the PPO discount. Freedom Claims Management, Inc. will coordinate your reimbursement as secondary payor.

		Employer	Employee
Employee Rates per month	Single	$410.38	$144.19
	Empl/Spouse	$749.41	$263.31
	Empl/Child(ren)	$659.50	$231.71
	Family	$1,129.22	$396.75

11/18/2020

<u>ADMINISTRATIVE AGREEMENT</u>

THIS AGREEMENT is made and entered into effective as of the 1st day of January, 2021, by and between **Freedom Claims Management, Inc.,** hereinafter referred to as "FCMI," and City of Abilene hereinafter referred to as "The Company."

WHEREAS, The Company has adopted a program of hospital, health care and prescription benefits ("Plan") for certain of its employees and annuitants;

AND WHEREAS, The Company desires to establish a business relationship whereby FCMI will undertake to act as a limited agent for The Company in (1) receiving and processing claims for benefits under the Plan, (2) disbursing claim payments under the Plan, and (3) performing such additional duties as are set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, it is agreed by FCMI and The Company as follows:

Section One
Claims Administration

1. Upon receipt of a claim for benefits, FCMI shall review the claim and determine whether it has been properly filed and the amount, if any, due and payable under the terms of the Plan.

2. On behalf of The Company, FCMI will disburse claim payments determined by FCMI to be due in accordance with the provisions of the Plan to the person or assignee entitled thereto.

3. FCMI shall take all reasonable steps necessary to process claims and disburse payments accurately and expeditiously, in accordance with the terms and conditions of the Plan and applicable laws.

Section Two
Payment of Claims

1. Payment of claims under the Plan shall be made by check drawn on an account to be maintained by FCMI at Farmers State Bank & Trust, Great Bend, Kansas, and prepared by FCMI as agent for The Company. Funds for the payment of claims will be requested by FCMI as claims are processed and made ready for payment. The Company shall remit the funds necessary for payment of the claims prior to the release by FCMI of checks for payment of claims.

2. In the event it is determined by FCMI that a claim previously paid by FCMI has been underpaid, FCMI will promptly adjust the claim and make any additional payment due under the Plan. In the event FCMI determines that a claim previously paid has been overpaid, or has made payment of benefits otherwise not properly payable under the Plan, FCMI will endeavor to recover the payment. FCMI's procedure to recover such payments shall include a formal request for a refund from the party improperly receiving the payments and, if such party fails to make a refund, FCMI may offset the amount refundable against any future benefits payments that may become due to such party. FCMI shall promptly notify The Company if it is unsuccessful in recovering any overpayment. FCMI shall not be required to initiate court proceedings to recover any overpayment, but may do so if it chooses to. FCMI shall not be liable to The Company for any overpayments unless FCMI has made such overpayment due to the serious or willful negligence of FCMI.

3. The determination of any claims payable under the Plan shall initially be made by FCMI. However, in the event The Company determines that FCMI has misinterpreted the Plan and so informs FCMI in writing, all claims reported after delivery of such written instructions to FCMI shall be processed and paid in accordance with The Company's interpretation as set forth in such writing.

4. The Company recognizes that clerical errors and normal variations in claim processing made without intent to defraud and absent serious or grave negligence or willful misconduct are possible. When any errors or variations are made and discovered, FCMI shall promptly commence reasonable efforts to correct, adjust and/or otherwise remedy the same to the extent such is possible. The cost of errors which cannot be corrected through the reasonable efforts of FCMI shall be treated as a benefit expense, provided that such error was not attributable to FCMI's intentional or grossly negligent acts or omissions. FCMI will be liable for the cost of errors only if the same are attributable to FCMI's intentional or grossly negligent acts or omissions.

Section Three
Agency Agreement

1. The Company recognizes that FCMI, in performing its obligations under this Administrative Agreement, is acting as a limited agent of The Company and has not been and shall not be designated the plan administrator with respect to the Plan for purposes of the Employee Retirement Income Security Act of 1974 (ERISA) or any other applicable state or federal law.

2. The Company shall hold FCMI, its officers, directors and employees harmless from all claims, judgments, settlements and costs, including reasonable attorney's fees, arising in

whole or in part out of its performance under this Administrative Agreement, excluding any and all claims, judgments, settlements and costs resulting from FCMI's serious or willful negligence, misconduct, fraud or failure to perform its obligations in accordance with this Agreement. The defense of any legal action instituted on a claim for benefits filed in accordance with the Plan shall not be an obligation of FCMI; however, FCMI agrees to cooperate with The Company in defense of any such action by providing any required records or evidence it has concerning the claim.

Section Four
Duties of the Company/Plan Administrator

1. The Company shall deliver to FCMI completed enrollment cards for each covered person eligible for benefits under the Plan as of the effective date of this Administrative Agreement. Thereafter, The Company shall notify FCMI on or before the 5th day of each month of all changes in participation in the Plan, whether by reason of termination change in classification, or any other reason.

2. The Company shall collect all monies payable into the Plan by The Company or the Plan participants in such manner as The Company deems appropriate and shall deliver all such monies so collected to the Plan or the claims account established under the Plan on not less than a monthly basis or whenever requested by FCMI for the required payment of claims.

3. The Company shall assist FCMI in the enrollment of Plan participants and cooperate with FCMI with regard to the proper settlement of benefits and shall transmit any inquiries pertaining to the Plan to the Plan administrator. The Company shall maintain a supply of

forms, enrollment cards, and other documents necessary for the administration of the Plan and shall distribute the same or make them available to persons eligible to participate.

4. The Company shall perform the duties and functions required by the Plan administrator under ERISA and regulations promulgated thereunder, including ERISA's reporting and disclosure requirements. These duties include preparation of the Plan Document and Summary Plan Description and its distribution to employees advising employees of changes in the provisions of the Plan, filing an annual Form 5500 or 5500C/R and preparing and distribution of the summary annual report to employees. The Company may contract with FCMI to assist it in performing these duties, but only as specifically stated herein or in a separate written agreement.

Section Five
Notification of Eligibility

1. The Company acknowledges that the effective performance of this administrative agreement by FCMI requires that FCMI be advised by The Company periodically but not less frequently than once per month of the identity of individual's eligible for benefits under the Plan, their effective date or termination date of eligibility, and the benefits to which each individual is entitled. The Company shall furnish such other information which may be reasonably required by FCMI to properly perform its duties under this Administrative Agreement. In determining any person's rights to benefits under the Plan, FCMI shall rely on eligibility information furnished by The Company prior to the submission of such person's claim. FCMI shall not be responsible for any non-performance or delays in performance of this agreement caused in whole or in part by the failure of The Company to furnish any information requested by FCMI in the performance of its duties under this Administrative Agreement.

Section Six
Modification of Plan Document

1. Any modification or amendment to the Plan shall be immediately communicated in detail and in writing by The Company to FCMI. After receipt by FCMI of such modification or amendment to the Plan, the term "Plan," as used in this Administrative Agreement, shall include such modification or amendment as of the effective date thereof or the date FCMI receives such written modification or amendment, whichever is the later date.

2. Any revision in the administrative charge which may be reasonably deemed necessary by FCMI as the result of any material modification or amendment to the Plan shall be communicated to The Company within thirty (30) days after receipt of notice of said modification or amendment. Any such revision is subject to the prior written approval of The Company; provided, however that if such approval is withheld, then FCMI may terminate this Agreement by providing The Company with at least forty-five (45) days prior written notice thereof.

Section Seven
Financial Responsibility

The Company hereby assumes responsibility and all liability resulting from eligible claims made in accordance with the Plan. FCMI shall not be responsible for any enrollee's medical or other debts arising out of any medical care or confinement.

Section Eight
Confidential and Proprietary Information

The Company and FCMI agree to use any confidential or proprietary information only in accordance with this Administrative Agreement and the Business Associate Agreement attached hereto as Exhibit C and incorporated herein by this reference (the "Business Associate

Agreement"). The Company will cooperate in providing FCMI with access to medical or other records which may be required by FCMI to perform services under this Administrative Agreement. FCMI will protect the confidentiality of the enrollee's medical information in accordance with the terms and conditions of the Business Associate Agreement and all applicable state and federal laws, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and any regulations promulgated pursuant thereto, including the HIPAA Security and Privacy rule (45 CFR Parts 160 and 164), and any amendments thereto, including through the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA) and the regulations promulgated pursuant thereto (collectively, "HIPAA").

Section Nine
Records Retention and Review

FCMI will maintain records of claims submitted under the Plan as well as any payments disbursed by FCMI under the Plan for a period of six (6) years. The Plan administrator, or duly authorized representatives of The Company, shall have the right to examine and audit such records during the regular business hours of FCMI upon five (5) business days' advance written notice to FCMI. At the request of The Company upon or following termination of this Agreement, FCMI shall promptly deliver all such records to The Company, or its designee, in either electronic or hard copy format.

Section Ten
Additional Duties of FCMI as Claims Supervisor

FCMI will perform the duties set forth in Exhibits "A" and "B" attached hereto and by this reference incorporated into this Administrative Agreement. The duties set forth in Exhibit "A" may, from time to time, be modified in writing by the mutual agreement of The Company and FCMI. Revised administration fees, if any, resulting from modification of the duties set forth in Exhibit "A" are subject to the prior approval of The Company and must be acknowledged in writing by The Company. The parties acknowledge and agree that the administrative fees payable hereunder shall not be increased during the initial term of the Agreement.

Section Eleven
Term of Agreement

The term of this Agreement shall commence on the day and year first above written and continue for a period of one (1) year, ending at 12:00 midnight. This Agreement shall automatically renew for like one-year terms unless written notice of non-renewal is given by either party to the other at least sixty (60) days prior to the end of any one-year term of this Agreement in which event this Agreement will terminate at midnight on the last day of the then current contract year.

Section Twelve
Early Termination of Agreement

This Administrative Agreement may be terminated prior to the end of its initial term or any renewal term as follows:

1. On any date mutually agreeable to The Company and FCMI, or

2. Sixty (60) days after FCMI receives written notice of termination by The Company, or

3. Sixty (60) days after The Company has received written notice of termination by FCMI.

Section Thirteen
Liabilities Prior to Termination

Upon expiration or earlier termination of this Administrative Agreement, The Company and FCMI will be relieved of any further liability or obligation hereunder, except for any obligations or liabilities which may arise from performance under the terms of this Administrative Agreement prior to termination thereof, and except as provided in Section Nine above and below in this Section Thirteen. Upon termination of this Administrative Agreement, FCMI and The Company shall return to one another any and all information of a proprietary nature belonging to the other (claims information will be returned to The Company COD). Administration services required to process and adjudicate claims incurred prior to the termination of this Administrative Agreement arising after termination of this Agreement (i.e. "run-out claims") will be provided by FCMI for a period of three (3) months following termination of this Agreement. In consideration for such services, the Company will pay FCMI the full amount of the applicable administration fees set forth on Exhibit B attached hereto during such three (3)-month period. Thereafter, FCMI may continue to process run-out claims on a month-to-month basis, subject to the mutual agreement of the parties, for a "per claim" fee to be negotiated and agreed to by the parties in writing.

Section Fourteen
Broker/Agent

The Company acknowledges that the relationship between The Company and any broker/agent/consultant involved in providing insurance services to The Company is direct between The Company and said broker/agent/consultant and without involvement of FCMI.

Section Fifteen
Notice Between Parties

Any notice to be given under the terms of this agreement shall be effective if given in writing and sent by United States mail, postage prepaid, and addressed as follows:

If to The Company:

City of Abilene
Attention: City Manager
419 N. Broadway
Abilene, Kansas 67410

If to FCMI:

Freedom Claims Management, Inc.
Attention: Julie Yarmer, President
2318 North Washington
P.O. Box 1365
Great Bend, KS 67530

Notices sent by U. S. mail shall be deemed to have been received three (3) business days after the postmark date.

Section Sixteen
Modification of Agreement

This Administrative Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no modification or amendment shall be valid unless in writing, signed by each of the parties hereto.

Section Seventeen
Force Majeure

Should the performance of services required under this agreement on the part of either FCMI or The Company be prevented or delayed by an act of God, governmental authority, or any other cause beyond either party's control, the time period for the performance of services will be extended for a period of time equal to the delay, and delayed performance will be excused. In such event, however, both parties agree to use reasonable efforts with respect to performance of their obligations under this Administrative Agreement.

Section Eighteen
Governing Law

This agreement shall be governed by and shall be construed in accordance with the laws of the State of Kansas. The Company hereby submits to jurisdiction in the State of Kansas and venue in Barton County, Kansas, and agrees that said court shall have exclusive jurisdiction of this Administrative Agreement and that any litigation regarding this Administrative Agreement shall be submitted to said court and no other court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

By_______________________________	**By_____________________________________**
(Title)___________________________	**(Title)__________________________________**
Freedom Claims Management, Inc.	**City of Abilene**
Date_______________________________	**Date____________________________________**

EXHIBIT A

1. Evaluation and payment or declination of the amount of claims presented, based on the provisions of the Plan Document.
2. Application of claims control procedures necessary to effectively implement the basic principles of the Plan.
3. Advising and offering aid to claimants in effort to help them meet the requirements for additional information.
4. Claim investigation, including discussion, when applicable, with physicians and other providers of service, for claim in question.
5. Obtaining, as necessary, information regarding nonduplication and/or coordination of benefits.
6. Investigation of claims whose charges appear to be excessive and applying reasonable and customary guidelines to payment activities.
7. Performing periodic audits, on a simple basis, of claim payments.
8. Notifying, in writing, claimants of rejected claims and the reason for such rejection.
9. Proper storage of all claim payment records for a period of six (6) years.
10. Preparation of monthly, quarterly, and/or annual claim reports for Companies on a timely basis.
11. Periodic review of claims experience to assist in procurement of underwriting advice.
12. Preparing information pertaining to claim payments to providers of health care related services for Companies requited pursuant to Section 6041, IRC for the preparation of 1099 form.
13. Contract for the printing of Plan Document.
14. Designing of Plan booklets describing all benefits of the Plan for issuance to all eligible employees or annuitants eligible under the Plan during the terms of the Administration Agreement or review of Plan booklets if prepared by the Companies.
15. Return of all claim files and related information to the Companies in the event of termination of the Agreement.

____________ Initial

____________ Date

EXHIBIT B

January 1, 2021

1. The charge to the Company for service by FCMI will be $50.00 per employee per month for administration of medical, prescriptions, standard reports, and routine consulting on the Plan Design. COBRA administration is included.

2. No less than thirty (30) days prior to the termination of the contract, FCMI will provide a revised Exhibit B and at that time may propose in writing a revision of the administration fee for the upcoming contract year.

3. FCMI may receive a claims service fee or rebate revenue, if provided, by Serve You.

4. FCMI will receive 15% of savings recovered by the Company as a "Risk Based" MERP fee. Savings will be determined by comparing data provided by the Company indicating the previous plan years insurance expenditure.

5. FCMI will charge a renewal fee in the amount of $300 for preparation of any plan changes and renewal packets for the FreedomChoice Plan.

____________ Initial

____________ Date

Exhibit C

Business Associate Agreement

This BUSINESS ASSOCIATE Agreement (this "Agreement") is made and entered into effective as of the first day of January, 2021 by and between City of Abilene ("Covered Entity") and Freedom Claims Management, Inc. ("Business Associate").

RECITALS

A. Covered Entity is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as such must comply with the Administrative Simplification Provisions of HIPAA, including the Privacy Standards and Security Standards (as defined in Article 1 of this Agreement), as of the dates indicated in instructions from the relevant federal agencies.

B. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on Be half of, Covered Entity as specified in Freedom Claims Management, Inc. Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

C. In order for Business Associate to furnish services to Covered Entity in accordance with the Agreement, Covered Entity intends to disclose certain Protected Health Information (as defined in Article 1 of this Agreement) of Covered Entity patients ("PHI") to Business Associate and expects Business Associate to use the PHI to perform its obligations under the Agreement.

D. Business Associate is a "business associate" within the meaning of the Privacy Standards.

E. Covered Entity will not transfer PHI to a business associate or permit the business associate to receive PHI on behalf of Covered Entity without satisfactory assurances from the business associate that it will appropriately safeguard the information.

F. Business Associate desires to provide the satisfactory assurances required by the Privacy Standards and further define the party's rights and responsibilities under HIPAA for the exchange of PHI.

NOW, THEREFORE, the parties, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

Article 1: Definitions

1.1. **Definitions**. For the purposes of this Agreement, the following defined terms shall have the following definitions.

a. **"Designated Record Set"** shall mean a group of records maintained by or for Covered Entity that is (i) the medical records and billing records about individuals maintained by or for Covered Entity, and (ii) used, in whole or in part, by or for Covered Entity to make decisions about individuals. For the purposes of this paragraph, the term "Record" means any items, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

b. **"HHS"** shall mean the United States Department of Health and Human Services.

c. **"Individually Identifiable Health Information"** shall mean information that is a subset of the health information, including demographic information, collected from an individual, as defined in 45 C.F.R. § 164.501 of the Privacy Standards.

d. **"Privacy Standards"** shall mean the Standards for Privacy of Individually Identifiable Health Information found at 45 C.F.R. §§ 160 and 164.

e. **"Protected Health Information"** shall mean certain Individually Identifiable Health Information, as defined in 45 C.F.R. § 164.501 of the Privacy Standards.

f. **"Secretary"** shall mean the Secretary of HHS.

g. **"Security Standards"** shall mean the Security Standards for the Protection of Electronic Protected Health Information found at 45 C.F.R. Part 164.

Article 2: Business Associate Use and Disclosure of PHI

2.1 **Purpose** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

2.2 **Recitals** The Recitals of this Agreement set forth above are hereby incorporated into this Agreement by this reference.

2.3 **<u>Receipt and Use of PHI</u>**.

a. Satisfactory completion of these services by Business Associate will require Business Associate to receive and use PHI obtained from Covered Entity, particularly patient medical records and associated billing and payment information, and related documents.

b. Business Associate may use PHI internally to carry out its legal responsibilities, for proper management, internal auditing, and administration.

2.4 **<u>Disclosure of PHI</u>**.

a. Satisfactory completion of these services by Business Associate may require Business Associate to disclose PHI to third parties, such as government agencies, insurance companies, or attorneys.

b. Business Associate also may disclose PHI to its agents to carry out its legal responsibilities, for proper management, internal auditing, and administration.

Article 3: Duties of Business Associate

3.1. **<u>Limitations on Use of PHI</u>**. Business Associate shall not use PHI except as permitted or required by this Agreement or as required by law.

3.2. **<u>Limitations on Disclosure of PHI</u>**. Business Associate shall not disclose PHI except as permitted or required by this Agreement or as required by law. Business Associate may disclose PHI (i) for Business Associate's proper management and administration, and (ii) to carry out the legal responsibilities of Business Associate under this Agreement, assuming either of the following conditions are satisfied: (a) the disclosure is required by law; or (b) Business Associate obtains reasonable assurances from the person to whom Business Associate further discloses the PHI that the information will be held confidentially, that the information will be used or further disclosed only as required by law or for the purposes for which it was disclosed, and the person notifies Business Associate of any instances where the confidentiality of the information has been breached.

3.3 **<u>Authorizations</u>**. Notwithstanding any other limitation in Sections 3.1 and 3.2, Covered Entity agrees that nothing in this Agreement prohibits Business Associate from using or disclosing PHI to the extent permitted by an authorization from the applicable patient.

3.4. **<u>Safeguarding PHI</u>**. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate also shall use appropriate safeguards to protect the integrity and availability of, and prevent unauthorized parties from accessing, using, disclosing, or tampering with PHI without limiting the foregoing or any other term or condition of the

Agreement. Business Associate acknowledges and agrees that, in accordance with the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder ("HITECH Act"), the Privacy Standards and Security Standards apply directly to Business Associate to the same extent that they apply to Covered Entity, and Business Associate agrees to comply directly therewith. In the event of a conflict between any requirements of this Agreement and any requirements of the Privacy Standards and Security Standards that are directly applicable to Business Associate, Business Associate shall comply with all requirements.

3.5. **Third Party Agreements**. Under certain circumstances, Business Associate may need to enter into agreements with third parties, including subcontractors, in order to satisfy its obligations to provide services under the Agreement. If Business Associate discloses to these third parties any PHI received from Covered Entity in this context, or created or received by Business Associate on behalf of Covered Entity, Business Associate shall require such third parties to agree to be bound by the same restrictions and conditions that apply to Business Associate under this Agreement.

3.6. **Reporting of Unauthorized Uses and Disclosures**. If Business Associate becomes aware of any **security incident or** use or disclosure of PHI by Business Associate, its employees, or its agents that is not provided for in this Agreement Business Associate shall report such **incident or** violation to Covered Entity.

3.7. **Access to Information**. Within twenty (20) days of Covered Entity's written request, Business Associate shall provide Covered Entity, or to an Individual upon Covered Entity's request, with access to PHI in Business Associate's possession, to the extent that Business Associate's information consists of a Designated Record Set of the Covered Entity**,** so that Covered Entity may comply with the Privacy Standards and the HITECH Act.

3.8 **Availability of PHI for Amendment**. The parties acknowledge that the Privacy Standards permit an individual who is the subject of PHI to request certain amendments of their records. Upon Covered Entity's written request, Business Associate shall provide Covered Entity with any PHI contained in a Designated Record Set of the Covered Entity in Business Associate's possession for amendment.

3.9. **Accounting of Disclosures**. Business Associate shall document such disclosures of PHI and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Privacy Standards and the HITECH Act. Upon Covered Entity's written request, Business Associate shall make available information to Covered Entity concerning Business Associate's disclosure of PHI for which Covered Entity needs to provide an individual with an accounting of disclosure as required by the Privacy Standards and the HITECH Act.

3.10. Availability of Books and Records. For purposes of determining Covered Entity's compliance with the Privacy Standards, Business Associate agrees to make available to the Secretary its internal policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity.

3.11. Return of PHI at Termination.

a. Upon termination of the Agreement, Business Associate shall, where feasible, destroy or return to Covered Entity all PHI received from, or created or received by Business Associate on behalf of Covered Entity in connection with the performance of its services. Business Associate shall notify Covered Entity in writing where such return or destruction is not feasible, and the duties of Business Associate under this Agreement shall be extended to protect the PHI retained by Business Associate. Business Associate agrees to limit further uses and disclosures of the information retained to those purposes which made the return or destruction infeasible.

b. Notwithstanding any other limitation in this section, Covered Entity agrees that it is not necessary for Business Associate to return or destroy PHI received from, or created or received by Business Associate on behalf of Covered Entity if patient authorizations permitting such retention have been executed **and remain in effect.**

3.12. Breach Notification. Without limiting any other term or condition of this Agreement, in the event Business Associate discovers a Breach (as defined under 45 C.F.R. 164.402 of PHI, Business Associate shall notify the Covered Entity thereof as required by 45 C.F.R. 164.410 and shall assist Covered Entity comply with Covered Entity's legal obligations relative to such Breach as requested by Covered Entity.

Article 4: Term and Termination

4.1. Basic Term. This Agreement shall be effective as of the date set forth above ("Effective Date"). Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date and shall run until the relationship between the Business Associate and the Covered Entity is terminated.

4.2. Termination for Material Breach. A material breach of this Agreement which is not addressed within thirty (30) days of written notice by the Covered Entity is grounds for termination by the Business Associate. Covered Entity may elect to terminate this Agreement immediately upon written notice to Business Associate where Business Associate commits a material breach. Unless sooner terminated under its terms, the Freedom Claims Management, Inc. Administrative Agreement shall terminate simultaneously with the termination of this Agreement.

Article 5: Indemnification

5.1. Covered Entity hereby saves and holds Business Associate harmless of and from, and indemnifies and agrees to defend it against any and all losses, liability, damages and expenses (including, without limitation, reasonable attorney's fees and expenses) which Business Associate may incur or be compelled to pay, or for which Business Associate may become liable or compelled to pay in any action, claim, or proceeding against Business Associate, its officers, directors, employees, agents, or servants, **to the extent caused by** Covered Entity's **breach o**f its obligations under this Agreement and/or the Privacy Standards **and/or the Security Standards.**

5.2. Business Associate hereby saves and holds Covered Entity harmless of and from, and indemnifies and agrees to defend it against any and all losses, liability, damages and expenses (including, without limitation, reasonable attorney's fees and expenses) which Covered Entity may incur or be compelled to pay, or for which Covered Entity may become liable or compelled to pay in any action, claim, or proceeding against Covered Entity, its officers, directors, employees, agents, or servants, **to the extent caused by** Business Associate's **breach** of its obligations under this Agreement and/or the Privacy Standards **and/or the Security Standards.**

5.3. This Section **and Section 3.11** shall survive termination of this Agreement.

Article 6: General Provisions

6.1 The Parties expressly acknowledge that it is, and shall continue to be, their intent to fully comply with all relevant federal, state, and local laws, rules, and regulations. Any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA and the Privacy and Security Standards.

6.2 This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Kansas

6.3 All notices or communications required or permitted pursuant to the terms of this Agreement shall be in writing and will be delivered in person or by means of certified or registered mail, postage paid, return receipt requested, to such Party at its address as set forth below, or such other person or address as such Party may specify by similar notice to the other party hereto, or by telephone facsimile with a hard copy sent by mail with delivery on the next business day. All such notices will be deemed given upon delivery or delivered by hand, on the third business day after deposit with the U.S. Postal Service, and on the first business day after sending if by facsimile.

As to Covered Entity:
City of Abilene
Attention: City Manager
419 N. Broadway
Abilene, Kansas 67410

Exhibit C

As to Business Associate:
Freedom Claims Management, Inc.
Attention: Julie Yarmer, President
2318 North Washington
P.O. Box 1365
Great Bend, KS 67530

6.4 This Agreement, including any exhibits attached hereto, constitutes the entire Agreement among the Parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements or statements among the Parties hereto, both oral and written, concerning the subject matter hereof. This Agreement may not be amended, modified, or terminated except by a writing signed by both Parties.

6.5 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any way affect or render invalid or unenforceable any other provision of this Agreement.

6.6 The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions of this Agreement.

6.7 This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

6.8 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither Party shall assign or delegate its rights, duties, or obligations under this Agreement, without the prior written consent of the other Party.

6.9 In the performance of the duties and obligations of the Parties pursuant to this Agreement, each of the Parties shall at all times be acting and performing as an independent contractor, and nothing in this Agreement shall be construed or deemed to create a relationship of employer and employee, or partner, or joint venture, or principal and agent between the Parties.

6.10 A reference in this Agreement to a section in the Privacy Standards or Security Standards means the section as in effect or as amended.

6.11 The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA and/or the Privacy and Security Standards.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the day and date first above written.

Freedom Claims Management, Inc.	**City of Abilene**
("BUSINESS ASSOCIATE")	("COVERED ENTITY")
By:___________________________	By:___________________________
Print Name:____________________	Print Name:____________________
Date:__________________________	Date:__________________________

Group Application/Certification

BlueCross BlueShield Kansas
Independent Licensees of the Blue Cross and Blue Shield Association.

ABILENE CITY EMPLOYEES

☐ New Group ☑ Benefit Change ☐ Rate Change ☐ Split ☐ Merger ☐ Old World ☑ New World

Group Details

Effective Date	**01/01/2021**	Group No.	**07528**
Master Policy No.	**MPN07528**	Type Group	**005**
Rep No.	**566**	Rep Name	**Andrew Gutierrez**
Tax ID	**48-6017973**	ID Card Name	
Grandfathered Status	**NonGrandfathered**		
NAICS	**921140 - EXECUTIVE & LEGISLATIVE OFFICES, COMBINED**		

Address Information

Remain as current ☑ Yes ☐ No

Contact Information

Remain as current ☑ Yes ☐ No

Employer Contribution

Employee ____________ ________________amount

Employee with spouse ____________ ________________amount

Employee with children ____________ ________________amount

Employee with dependents ____________ ________________amount

Other:

Health Coverage

Package **HI93A**

Deductible	$6,350 per person ($12,700 two-or-more persons). After deductible is met, covered services are paid at 100% of the maximum allowance for the remainder of the benefit period.
Coinsurance	None
Maximum Out-of-Pocket	$6,350 per person ($12,700 two-or-more persons). After the maximum out-of-pocket amount has been reached(copays, deductible, coinsurance), eligible benefits will be paid at 100% of the allowed amount for the remainder of the benefit period.
Office Visits	Subject to deductible, except for eligible Preventive Care Services.
Telemedicine Visits	Subject to deductible, except for eligible Preventive Care Services.
Prescription Drugs & Mail Order	Subject to deductible. Designated Specialty Pharmacy.
Outpatient Radiology & Lab Services (Includes Advanced Imaging)	Subject to deductible.
Emergency Room Copay	Subject to deductible.
Accidental Injuries	Subject to deductible.
Preventive Care Services as defined by Affordable Care Act	In network 100% coverage; out of network subject to policy provisions including non-network penalties.
Home Social Work Visits/Hospice	Subject to deductible.
Mental Illness and Substance Use Disorders	Subject to deductible.
Lifetime Maximum	Unlimited for each covered person.
Eligible Dependents	Covered to age 26.

As part of the Affordable Care Act, preventive services are paid at 100% of the allowable charge (i.e., without copays, deductibles, or coinsurance) for non-grandfathered groups. Pediatric dental and pediatric vision are subject to deductible and coinsurance.

Dental Coverage

Stand-Alone Dental ☑

Dental Code **DT020**

Building Block 100/50/50/100 with $1500 Ortho Max

Dental being applied to all contracts ☐ Yes ☑ No If no, see attached list

Dental Waiting Periods ☐ Yes ☑ No

- ☐ Impose waiting periods for Riders A & B
- ☐ Credit per effective dates on attached commercial bill
- ☐ Waive at new group formation for those listed on last commercial bill (billing must be attached)
- ☐ Waive for all at new group formation*

*Prior approval by underwriting required

Monthly Premiums

	Type of Coverage	Health	Dental	Total
Option A	Employee	$487.68	$39.93	$527.61
	Employee/Children	$987.12	$86.47	$1,073.59
	Employee/Spouse	$1,047.31	$85.68	$1,132.99
	Family	$1,546.75	$132.22	$1,678.97

Application/Certificate

I represent my understanding of the following:

1. This Group Application/Certification (GAC) and the Payroll Census form(s) constitute an application for group insurance with Blue Cross and Blue Shield of Kansas (BCBSKS). The business sponsoring this group health plan is an active business operating on a full-time basis in the BCBSKS service area. I acknowledge that BCBSKS has the right to request and receive any information necessary to validate my representations about my business and any intentional misrepresentation of material fact related to this application for group insurance may result in termination or rescission of coverage.
2. I understand that if my group replaces BCBSKS with another health insurer, any coverage provided pursuant to this application will be cancelled for both the group and the individuals it includes.
3. All information provided on this GAC and the Payroll Census is true and complete to the best of my knowledge. I acknowledge that BCBSKS will rely on this information in accepting this group for coverage and will promptly notify BCBSKS of any changes. I also acknowledge that any intentional misrepresentation of material fact in this application may result in termination or rescission of coverage.
4. I understand it is the responsibility of the Contract Holder/employer group's Plan Administrator to submit to the Company for enrollment only those employees and dependents who meet the eligibility criteria of the Contract Holder and the Company, and to ensure and verify the continued eligibility status of covered employees and dependents.
5. The Company has the right to recover from Insureds and/or providers any benefit payments paid on behalf of ineligible persons.
6. Should the actual enrollment of my group increase or decrease, I understand BCBSKS reserves the right to re-evaluate and adjust premiums accordingly.

Plan Sponsor Representative, Plan Administrator Representative or Officer of the Company Name ______________________________
(please print)

Signature ______________________________

Date Signed ______________________________

BCBSKS Representative Name Andrew Gutierrez

BCBSKS Representative Signature ______________________________

Broker Name/Agency ______________________________

Date Materials Completed (NSD) ______________________________

Important: All paperwork must be signed, dated, and received prior to the requested effective date of coverage.

If requested effective date is missed, your representative will be contacting you to confirm the next possible effective date for your coverage to begin.

Comments/Special Instuctions

Group will only offer HI93A for health as of 1/1/21. The group will renew their current dental with 2021 contract changes.

For Office Use ONLY	
Typed	Proofed

CITY OF ABILENE

Item for City Commission Agenda

Meeting Date: 11/23/2020

Originating Department	Prepared By:	Approved For Agenda By: *(Office Use Only)*
Administration	Penny Soukup	JF

AGENDA ITEM HEADING:

Consider Resolution 112320-1 adopting the City of Abilene pay plan for the year 2021

BACKGROUND:

In November of 2019 the Austin Peters Group, Inc. prepared and presented a new classification and compensation study to the City Commission. This was adopted by resolution 111219-1. The new classification and compensation plan for the City of Abilene employees was put in place January 1, 2020.

During the 2021 budget process staff worked diligently to maintain a flat budget. During the process we also wanted to make sure we kept the new classification and compensation plan in mind. In doing so we budgeted a 1.75% increase to the ranges in the plan. The amount of the adjustment to the pay ranges has varied annually. We have had years with no adjustment and we have had years with 3.5% adjustments. In 2020 we adjusted the ranges by 2.5% plus implemented the new pay plan. In determining a budget amount we look at the consumer price index, and we determined that 1.75% was well within the parameters of the CPI. We are doing very well financially this year and feel that this adjustment will help maintain the new plan as we move forward.

We have prepared resolution 112320-1 seeking the commission’s approval for the budgeted 2021 pay ranges.

FISCAL NOTE:

Included in the 2021 adopted budget.

COMMISSION ACTION:

Consider approval of resolution number 112320-1

RESOLUTION NO. 112320-1

A RESOLUTION PROVIDING FOR AN ADJUSTMENT TO THE PAY PLAN OF THE CITY OF ABILENE, KANSAS, TO ENSURE APPROPRIATE COMPENSATION FOR CITY EMPLOYEES AS COMPARED WITH THE COMPARABLE LABOR MARKET.

WHEREAS, the City Commission has adopted Resolution Number 111219-1 adopting a classification and compensation plan for the City of Abilene, Kansas to ensure appropriate compensation for City Employees as prepared by the Austin Peters Group, Inc. The new ranges were put in place January 1, 2020;

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, Kansas, as follows:

SECTION 1. Adjustment to Pay Plan. In order to maintain the adopted pay and classification plan a one and three quarters percent (1.75%) adjustment will be applied to all pay ranges in the Pay Plan for 2021 as shown in the table below:

Range	2020 MIN	2020 MAX	2021 Min	2021 Max
1	$14.45	19.51	14.70	19.85
2	$16.06	21.69	16.34	22.07
3	$17.28	$23.33	$17.58	$23.74
4	$18.51	$25.00	$18.83	$25.44
5	$19.59	$26.46	$19.93	$26.92
6	$20.89	$28.21	$21.26	$28.70
7	$23.44	$31.65	$23.85	$32.20
8	$24.61	$32.60	$25.04	$33.17
9	$25.14	$33.94	$25.58	$34.53
10	$26.40	$35.64	$26.86	$36.26
11	$34.31	$46.32	$34.91	$47.13
12	$36.02	$48.64	$36.65	$49.49
13	$48.78	$65.86	$49.60	$67.01

SECTION 2. Step System. The adopted 2021 budget incorporated the amounts necessary to execute the provision of the Pay Plan that provides for the above adjustments to the pay plan.

SECTION 3. Implementation. The City Manager is hereby authorized to implement changes to the Pay Plan as provided in the approved Pay Plan document and this Resolution as provided in the applicable resolutions, ordinances and laws.

SECTION 4. Repeal. Adoption of this Resolution superseded and repeals all previous Pay Plans adopted by the City of Abilene, Kansas.

SECTION 5. Effective Date. That the effects of the Resolution shall be in full force and effective as of January 1, 2021.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 12th day of February, 2018.

(Seal)

____
Chris Osterman, Mayor

ATTEST:

____
Penny Soukup, CMC
City Clerk

ABILENE KANSAS

City of Abilene

Item for City Commission Agenda

Meeting Date: 11/23/20

Originating Department	Prepared By:	Approved for Agenda By: *(Office Use Only)*
City Inspector	Travis Steerman	JF

AGENDA ITEM HEADING:

Consider condemnation of church and house structures at 1015 N. Mulberry St.

BACKGROUND:

City staff conducted an inspection of both structures located at 1015 N Mulberry and have found both to be dangerous. Property was not entered due to condition of floor. From the front door most of the following collective conditions were witnessed.

- Various holes in roof
- Vegetation growing in roof due to the presence of dampness and rot
- Front door not secure
- Several broken windows with a number unsecured
- Rotten eaves and fascia
- Evidence of rainwater damage to the ceilings
- Floor damage so significant safe travel was not achievable
- Plaster fallen off the walls and ceiling in various locations
- Large amount of debris on floor
- Evidence of water damage to the joists and rafters
- Cracked or missing siding
- Chimney in need of repair
- Vegetative overgrowth along the exterior walls
- Evidence of mice and cats in the house, although none were observed

After the inspection of the home was concluded entrance to the church structure was granted and entered. All of first floor of church was able to be observed and inspected. These conditions were present.

- Various holes in roof
- Roofing in serious disrepair
- Rotten eaves and fascia
- Heavy vegetation overgrowth around perimeter of church
- Added structure to the back in total disrepair and collapsing
- Ceiling tile missing due to water damage
- Visible daylight through various sections of the roof
- Water damage to ceiling
- Damaged tiles throughout floor on south side of building
- Plant growth in cushions of church pews
- Rainwater damage to floor

FISCAL NOTE:

House and church have been vacant for some time. The actual inspection of this property took place June 27, 2019. At that time, this property was due to be sold at the tax sale in early 2020. Sometime after the inspection taxes were paid on property. Various weed notices have been sent to the owners throughout the years and an actual notice about the condition of the property was sent out 2011 by previous staff. This property has received multiple complaints through 2017 to present.

COMMISSION ACTION:

Public hearing on 11/23/20 to hear all evidence submitted by the owner. After closing public hearing, the City Commission may adopt a resolution stating their findings and affixing a reasonable time for repair or removal.

RESOLUTION NO. 112320-2

A RESOLUTION FINDING THAT THE STRUCTURES LOCATED AT 1015 N. MULBERRY ST., ABILENE, KANSAS ARE UNSAFE AND DANGEROUS AND DIRECTING THE STRUCTURES TO BE REPAIRED OR REMOVED AND THE PREMISES MADE SAFE AND SECURE.

WHEREAS, the building inspector of the City of Abilene, Kansas filed with the Governing Body a statement in writing that the structures, hereinafter described, are unsafe and dangerous.

WHEREAS, the Governing Body did by resolution fix the time and place of a hearing at which any owner, any owner's agent, any lienholders of record and any occupant of such structure could appear and show cause why such structures should not be condemned and ordered repaired or demolished, and did duly publish and serve said resolution in the manner provided by law;

WHEREAS, on November 23, 2020, the Governing Body heard all evidence submitted by the property owners, the owner's agents, lienholders of record and occupants having an interest in such structures, as applicable, as well as evidence submitted by the building inspector.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the City of Abilene, Kanas:

Section 1: The Governing Body finds that the dwelling and church structures at the property commonly known as 1015 N. Mulberry St. Abilene, Kansas are unsafe and dangerous and that such conditions endanger the life, health, property or safety of the public or the occupants. The legal description of the subject property is as follows:

Lot 6, Block 3, in Rice and Austin's Addition to Town now City of Abilene, Dickinson County, Kansas.

Section 2. The Governing Body further finds that the following conditions render the structures unsafe and dangerous:

1. Various holes in roof
2. Vegetation growing in roof due to the presence of dampness and rot
3. Front door not secure
4. Several broken windows with a number unsecured
5. Rotten eaves and fascia
6. Evidence of rainwater damage to the ceilings and floors
7. Floor damage so significant safe travel was not achievable
8. Plaster fallen off the walls and ceiling in various locations

9. Large amounts of debris on floor
10. Evidence of water damage to the joists and rafters
11. Cracked or missing siding
12. Chimney in need of repair
13. Heavy vegetative growth along the exterior walls
14. Evidence of mice and cats in the house, although none were observed
15. Roofing in serious disrepair, visible daylight through various sections
16. Added structure to the back in total disrepair and collapsing
17. Plant growth in cushions of church pews

Section 3: The owner is directed to repair or remove the structures, and to make the premises safe and secure (the "Work"), The Work shall be commenced by December 31, 2020 and shall be diligently prosecuted so as to allow for substantial completion of all Work no later than December 31, 2020. For purposes of this Resolution, the owner shall be deemed to have commenced the Work only if the owner has: (1) caused application to be made to the City of Abilene for, and obtained, the required permit(s) for the Work; or (2) commenced the physical Work on the premises after providing the building inspector with satisfactory evidence that no permits are required for the proposed Work under applicable law.

Section 4: If the owner fails to commence the Work, or to diligently prosecute the Work until the Work is substantially completed, all within the times stated, the Governing Body will cause the structures to be repaired or razed and removed.

Section 5: The City Clerk shall publish this resolution one (1) time in the official city newspaper and shall mail, by certified mail, copies of the resolution to each owner, agent, lienholder of record and any occupant of the structures within three (3) days after its publication.

Adopted by the Board of City Commissioners and signed by the Mayor this 23rd day of November 2020.

CITY OF ABILENE, KANSAS

____

Chris Ostermann, Mayor

ATTEST:

____

Penny L. Soukup, CMC, City Clerk

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 11/23/20

Originating Department	Prepared By:	Approved For Agenda By: (*Office Use Only*)
Administration	Jane Foltz, City Manager/Aaron Martin, City Attorney	JF

AGENDA ITEM HEADING:

1. Hold Public Hearing for the issuance of IRB's for Narayan project
2. Consider an Ordinance authorizing the issuance of taxable Industrial Revenue Bonds Series 2020 for Narayan Inc.

BACKGROUND:

On January 13, 2020, the City Commission approved a Development Agreement between the City and Naryan, Inc., in relation to the development of the Holiday Inn Express hotel project at the southeast corner of Buckeye Avenue and Roller Coaster Road. Subject to the terms and conditions of the Development Agreement, the City agreed to permit the hotel project to participate in certain economic development programs, including:

- The issuance of industrial revenue bonds for purposes of a property tax abatement and sales tax exemption;
- The creation of a community improvement district; and
- The rebate of a portion of the transient guest tax generated by the Developer's new hotel to be constructed and operation on a portion of the subject property.

During the January 13, 2020 City Commission meeting, the City Commission also held the required public hearing related to the proposed issuance of industrial revenue bonds in the principal amount of $7,500,000 and the exemption from ad valorem taxation of the hotel project to be constructed with the proceeds of the industrial revenue bonds. Following the public hearing, the City Commission adopted Resolution No. 011320-2, which, among other things, authorized the City to issue industrial revenue bonds in the approximate principal amount of $7,500,000.00.

Pursuant to Resolution No. 011320-2, the City's issuance of the industrial revenue bonds was made subject to numerous conditions, including but not limited to: (a) the passage of an ordinance authorizing the issuance of the bonds; (b) the successful negotiation of a Bond Agreement, Lease or other legal documents necessary to accomplish the issuance of the bonds; and (c) the successful negotiation and sale of the bonds to a purchaser yet to be determined.

Naryan, Inc. now wishes to proceed with development and construction of the project, and it is necessary for the City to pass an ordinance authorizing the issuance of the bonds, and approve the bond agreement, leases, and various other legal documents necessary to accomplish the issuance of the bonds and qualify the property for the property tax abatement. Naryan, Inc. will be the purchaser of the bonds.

The estimated project cost to construct the hotel project has increased to $8,000,000. Because Resolution No. 011320-2 only authorized the issuance of bonds in the approximate principal amount of $7,500,000, it is necessary to hold another public hearing in order to authorize the issuance of bonds in an amount equal to the full project cost. Increasing the amount of the bonds will ensure that the full project value receives the benefit of the property tax abatement.

During the public hearing, all persons having an interest in the matter will be given an opportunity to be heard. Following the public hearing, the City Commission will consider approving an ordinance authorizing the issuance of the industrial revenue bonds in an amount not to exceed $8,000,000, for the purpose of providing funds for the acquisition, construction, and equipping of the hotel project. The ordinance will approve various other documents required for, and customarily associated with, the City's issuance of industrial revenue bonds for development projects. These other documents approved by the ordinance include a trust indenture with BOKF, N.A., as trustee of the bonds, project leases between the City and Naryan, Inc., and a bond purchase agreement between the City and Naryan, Inc. If approved, these documents will exempt the hotel property from ad valorem taxes, as anticipated by the development agreement entered into between the City and Naryan, Inc. on January 13, 2020.

We have invited Sarah Steele from Gilmore & Bell, the City's bond counsel, to attend the November 23, 2020 meeting and present additional information and answer additional questions related to the industrial revenue bonds and the Narayan, Inc. economic development project.

FISCAL NOTE:

The City's issuance of industrial revenue bonds does not create any liability for the City, and the bonds do not constitute an obligation of the City. As explained above, industrial revenue bond financing would afford the new hotel property 100% property tax abatement for 10 years. It would also exempt from sales tax all of the costs of the project related to items such as construction materials, building furnishings, and equipment. The City's costs of facilitating the industrial revenue bond financing, including issuing the bonds, will be paid and/or reimbursed by Naryan, Inc.

COMMISSION ACTION:

1. Hold the public hearing for issuance of industrial revenue bonds in the amount of $8,000,000, to pay the costs of the acquisition, construction, equipping and furnishing of a hotel facility.
2. Consider an ordinance authorizing the City to issue its taxable industrial revenue bonds, series 2020 (Narayan, Inc.) for the purpose of the acquisition, construction and equipping the hotel facility; and authorizing certain other documents and actions in connection therewith.

GILMORE & BELL, P.C.
November 7, 2020

ORDINANCE NO. 20-3395

OF THE
CITY OF ABILENE, KANSAS

AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED $8,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

(Published in *The Abilene Reflector-Chronicle*, ____________, 2020)

ORDINANCE NO. 20-3395

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

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

B. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) dated December 1, 2020 in the aggregate principal amount of not to exceed $8,000,000 (the "Series 2020 Bonds"), for the purpose of paying the costs of the acquisition, construction and equipping of a certain hotel facility (the "Project"), as more fully described in the Indenture and in the Lease authorized in this Ordinance, for lease to NARAYAN, INC., a Kansas corporation (the "Tenant").

C. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2020 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Trust Indenture dated as of December 1, 2020 (the "Indenture"), with BOKF, N.A., Kansas City, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 2020 Bonds;

(ii) a Site Lease dated as of December 1, 2020 (the "Site Lease"), with the Tenant, under which the Issuer will acquire a leasehold interest in the real property on which the Project will be located;

(iii) a Lease dated as of December 1, 2020 (the "Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments; and

(iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2020 Bonds by the Issuer to NARAYAN, INC., Abilene, Kansas (the “Purchaser”).

D. The Issuer's governing body has found that under the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project purchased or constructed with the proceeds of the Series 2020 Bonds is eligible for exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Issuer's governing body has further found that the Project

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should be exempt from ad valorem property taxes for a period of ten (10) years. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d.

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

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

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

Section 3. **Authorization of and Security for the Bonds**. The Issuer is authorized and directed to issue the Series 2020 Bonds, to be designated "City of Abilene Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.)" in the aggregate principal amount not to exceed $8,000,000, for the purpose of providing funds to pay the costs of the acquisition, construction and equipping of the Project. The Series 2020 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series 2020 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Lease of the Project. The Series 2020 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture**. The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2020 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project**. The Issuer will acquire, construct and equip the Project and lease it to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 6. **Authorization of Bond Purchase Agreement**. The Issuer is authorized to sell the Series 2020 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 7. **Execution of Bonds and Bond Documents**. The Mayor of the Issuer is authorized and directed to execute the Series 2020 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2020 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 8. **Property Tax Exemption**. The Project will be exempt from ad valorem property taxes for ten (10) years, commencing in the calendar year after the calendar year in which the Series 2020 Bonds are issued, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Board of Tax Appeals.

Section 9. **Pledge of the Project and Net Lease Rentals**. The Issuer hereby pledges the Project and the net rentals generated under the Lease to the payment of the Series 2020 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2020 Bonds are paid or deemed to have been paid under the Indenture.

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

Section 11. **Further Authority**. The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2020 Bonds and the Bond Documents.

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

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

PASSED by the governing body of the Issuer on November 23, 2020 and **SIGNED** by the Mayor.

(SEAL)

____
Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM ONLY.

____
City Attorney

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602204.20020\ORDINANCE

(Signature Page to Bond Ordinance)

CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. ____ of the City of Abilene, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

____
City Clerk

602204.20020\ORDINANCE

(Clerk's Certificate)

EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF ABILENE, KANSAS
HELD ON NOVEMBER 23, 2020

The governing body of the City of Abilene, Kansas met in regular session at the usual meeting place in the City, at 4:00 p.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * * * * * * * * * * *

(Other Proceedings)

Among other business, in accordance with notice published on November 13, 2020, in Abilene Reflector-Chronicle, a public hearing was held by the governing body relating to the proposed issuance not to exceed $8,000,000 principal amount of Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) and the proposed granting of an ad valorem property tax exemption for the property purchased with the proceeds of the Bonds. All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented for passage an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Commissioner ________________ moved that said Ordinance be passed. The motion was seconded by Commissioner ________________. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No __________ and was signed by the Mayor and the signature attested by the City Clerk.

602204.20020\ORDINANCE

* * * * * * * * * * * * * *

(Other Proceedings)

* * * * * * * * * * * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Abilene, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

____
City Clerk

602204.20020\ORDINANCE

(Clerk's Certificate of Minutes)

(Published in *The* ***Abilene Reflector-Chronicle*** on November 27, 2020)

SUMMARY OF ORDINANCE NO. [__]

On November 23, 2020, the governing body of the City of Abilene, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) in the aggregate principal amount not to exceed $8,000,000 (the "Series 2020 Bonds"), for the purpose of paying the costs of the acquisition, construction and equipping of a hotel facility (the "Project"), as more fully described in the Indenture and in the Lease authorized by the Ordinance. The Project will be leased by the Issuer to NARAYAN, INC., a Kansas corporation. In connection with the issuance of the Series 2020 Bonds, the Issuer approves a ten (10) year exemption from ad valorem property taxes for the Project.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 419 N. Broadway Street in Abilene, Kansas. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.abilenecityhall.com.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: November 23, 2020.

____
City Attorney

602204.20020\ORDINANCE

GILMORE & BELL, P.C.
NOVEMBER 23, 2020

TRANSCRIPT OF PROCEEDINGS

AUTHORIZING THE ISSUANCE

OF

NOT EXCEEDING $8,000,000

CITY OF ABILENE, KANSAS

TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

Dated December 9, 2020

NOT EXCEEDING $8,000,000
CITY OF ABILENE, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

Closing: December 9, 2020

The documents described in the Closing List are to be delivered and taken as a condition precedent to the issuance and delivery of the above-described Bonds by the City of Abilene, Kansas. Such delivery of documents shall be deemed to have taken place simultaneously at the closing, and no delivery of documents, payments of moneys or other actions with respect to this transaction will be considered completed until all such deliveries, payments or other actions have been made or taken.

The pre-closing is scheduled for 3:00 P.M. on December 8, 2020, and the closing is scheduled for 11:00 A.M. on December 9, 2020, at the office of Gilmore & Bell, P.C., in Wichita, Kansas. The items set forth on the Closing List will be examined, assembled and incorporated in the transcripts evidencing the authorization and issuance of the Bonds. Bond transcripts will be prepared and distributed to the following:

1. City of Abilene, Kansas ("Issuer")
2. NARAYAN, INC. ("Company") and (“Purchaser”)
3. BOKF, N.A. (the "Trustee")
4. Gilmore & Bell, P.C. ("Bond Counsel")
5. Aaron Martin, Esq. ("City Attorney")
6. Polsinelli PC ("Company's Counsel")
7. Dickinson County Economic Development Corp.

Of the parties listed above, the Issuer and the Trustee will receive original, paper copies of the transcript. All other parties will receive copies of the transcript of proceedings in electronic format unless a copy on CD-ROM is requested before closing.

* * *

CLOSING LIST

Document
<u>Number</u>

BASIC BOND DOCUMENTS:

1. Trust Indenture

2. Site Lease

3. Lease Agreement

4. Bond Purchase Agreement

ADDITIONAL ISSUER DOCUMENTS:

5. Abstract of Minutes
    a. Relating to Public Hearing and Resolution of Intent
    b. Relating to Public Hearing and Passage of Bond Ordinance No. ____________

6. Resolution of Intent

7. Affidavits of Mailing and Publication regarding Notices of Public Hearings
    a. Publisher's Affidavits of Publication

8. Bond Ordinance

9. Affidavit of Publication of Bond Ordinance

10. Specimen Series 2020 Bond
    a. Certificate of Bond Printer

11. Certificates of Manual Signature
    a. Mayor
    b. City Clerk

12. Issuer's Closing Certificate
    a. Analysis of Costs and Benefits

13. Information Statement filed with the Kansas Board of Tax Appeals

14. Letter of Complete and Timely Filing with Kansas Board of Tax Appeals

15. Certificate of Issuance filed with the Kansas Board of Tax Appeals

16. Notice of Lease

17. Assignment of Lease

DOCUMENTS RELATING TO AND DELIVERED BY THE TENANT:

18. Tenant's Closing Certificate with Exhibits
    a. Articles of Incorporation
    b. Bylaws
    c. Authorizing Resolution
    d. Expected Use of Bond Proceeds
    e. Certificate of Good Standing for Tenant from Kansas Secretary of State

19. Insurance Certificates

20. Ownership and Encumbrances Report

MISCELLANEOUS DOCUMENTS:

21. Trustee's Receipt and Closing Certificate

22. Purchaser's Receipt and Closing Certificate

23. UCC Financing Statements

24. Closing Memorandum

LEGAL OPINIONS:

25. Bond Counsel Opinion

26. Opinion of Counsel for the Issuer

27. Opinion of Counsel for the Tenant

* * *

ISSUER'S CLOSING CERTIFICATE

Not Exceeding $8,000,000
City of Abilene, Kansas
Taxable Industrial Revenue Bonds
Series 2020
(NARAYAN, INC.)

We, the undersigned, hereby certify that we are the duly elected or appointed, qualified or acting Mayor and City Clerk of the City of Abilene, Kansas (the "Issuer") and, as such officers, we are familiar with the official books and records of the Issuer and, in connection with the issuance by the Issuer of the above-described bonds (the "Bonds"), hereby certify as of December 9, 2020, as follows:

1. ORGANIZATION AND AUTHORITY

1.1 **Due Organization.** The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.

1.2. **Meetings**. The meetings of the City Commission at which action was taken as shown in the Transcript (as hereinafter defined) were either regular meetings or duly adjourned regular meetings or special meetings duly called and, to the best of our knowledge and belief, held in accordance with the law and the rules of the Issuer.

1.3. **Incumbency of Officials.** The following named persons were and are the duly elected or appointed, qualified and acting officials of the Issuer during the proceedings relating to the authorization and issuance of the Bonds:

Name	Title	Term of Office
Chris Ostermann	Mayor	01/2020 to Date
	Commissioner	01/2018 to 01/2022
Timothy B. Shafer	Mayor	8/28/2017 to 01/2020
	Commissioner	04/2015 to 01/2022
Dee Marshall	Commissioner	04/2015 to 01/2024
Trevor Witt	Commissioner	11/2018 to 01/2022
Brandon Rein	Commissioner	01/2020 to 01/2024
Penny Soukup	City Clerk	N/A

1.4. **Official Newspaper.** The *Abilene Reflector-Chronicle* is the Issuer's official newspaper and was the official newspaper on the date of publication of (1) the Ordinance, (2) the Notices required pursuant to K.S.A. 12-1740 *et seq*. (the "Act"); and (3) a Notice of Public Hearing as required by law relating to the issuance of the Bonds and granting of a property tax exemption.

2. ISSUER DOCUMENTS

2.1. **Transcript of Proceedings.** The transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds to be furnished to NARAYAN, INC., the original purchaser of the Bonds (the "Purchaser"), and the other parties to the transactions entered into by the Issuer in connection with issuance of the Bonds, is to the best of our knowledge, information and belief full, true and complete; none of such proceedings has been modified, amended or repealed; and such facts as are stated in the transcript still exist.

602204.20020\CLOSING DOCS

2.2. **Execution of Bonds and Bond Documents.** We have duly signed and executed, manually or by facsimile, the Bonds in an aggregate principal amount not exceeding $8,000,000, consisting of a fully registered bond certificate in an aggregate principal amount of all Bonds presently outstanding, and the following described documents (collectively, the "Issuer Documents") authorized by Ordinance No. [_____] (the "Ordinance"):

(i) a Trust Indenture dated as of December 1, 2020 (the "Indenture"), with BOKF, N.A., Kansas City, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Bonds;

(ii) a Site Lease dated as of December 1, 2020 (the "Site Lease"), with the Tenant, under which the Issuer will a leasehold interest in the real property on which the Project will be located; and

(iii) a Lease dated as of December 1, 2020 (the "Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payment; and

(iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2020 Bonds by the Issuer to NARAYAN, INC., Abilene, Kansas (the "Purchaser").

On the date when the Bonds and the Issuer Documents were executed by us, we were and, at the date hereof, we are the officials indicated by our signatures on the Bonds and the Issuer Documents, and by our signatures on this certificate, respectively. The signatures of us and each of us, as such officials, respectively, on the Bonds and the Issuer Documents, are our true and genuine signatures, and the seal applied to or imprinted on the Bonds and the Bond Documents at the time of their execution was and is the official seal of the Issuer and was thereto applied to or imprinted by the authority and direction of the governing body of the Issuer, and is the seal applied to this certificate.

We hereby ratify, confirm and adopt the facsimile signatures on the Bonds as a proper execution of said Bonds. Each signature has been duly filed in the office of the Secretary of State of Kansas pursuant to K.S.A. 75-4001 to 75-4007.

2.3. **Enforceability of Documents.** To the best of our knowledge and belief, the Issuer has, by all necessary action, duly authorized the execution, issuance and delivery of the Bonds and the Issuer Documents and all such other agreements and documents as may be required to be executed and delivered by the Issuer in order to carry out, give effect to and consummate the transactions contemplated by the Issuer Documents and the Ordinance. To the best of our knowledge and belief, the Bonds and the Issuer Documents, as executed and delivered, constitute legal, valid and binding obligations of the Issuer in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties, and except as rights to indemnity, if any, may be limited by principles of public policy).

2.4. **Representations and Warranties**. To the best of our knowledge and belief, each of the representations and warranties of the Issuer in the Issuer Documents is true and accurate as if made on and as of this date and that all agreements to be complied with and obligations to be performed by the Issuer under the Ordinance and the Issuer Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. **No Event of Default.** To the best of our knowledge and belief, at the date hereof, no Event of Default of the Issuer specified in the Issuer Documents, and no event which, with the giving of notice or lapse of time or both, would become such an Event of Default of the Issuer thereunder, has occurred.

3. LEGAL MATTERS; PROJECT

3.1. **Location of Project.** The property to be acquired and constructed out of the proceeds of the Bonds is located within the corporate limits of the Issuer.

3.2. **Non-Litigation.** There is not now pending or, to the knowledge of the undersigned officials of the Issuer, threatened, any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, or the proceedings or authority under which they are to be issued, or the existence of the Issuer, or the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for payment of the Bonds.

3.3 **Required Governmental Approvals.** The Issuer has received all approvals of State and other appropriate governmental officials required by the Act.

3.4 **Compliance with Statutes Governing Property Tax Exemptions.** Written notices complying with the provisions of K.S.A. 12-1749c and K.S.A. Supp. 12-1749d (relating to ad valorem property tax exemptions) were given in a timely manner to the Board of County Commissioners of Dickinson County, Kansas and to each unified school district in which the Project is located. Prior to the granting of the property tax exemption, an analysis of the costs and benefits of such exemption was prepared for the Issuer's governing body which included the effect of the exemption on state revenues, and a public hearing on the granting of the exemption was held by the governing body of the Issuer. A copy of the Analysis of Costs and Benefits is attached to this Certificate as ***Exhibit A***. Notice of the public hearing was published once at least seven days prior to the hearing in the official newspaper of the Issuer, and indicated the purpose, time and place of the hearing.

4. MISCELLANEOUS

4.1. **Request to Authenticate and Deliver Bonds.** Pursuant to the Indenture, the Trustee is hereby authorized to execute the Certificate of Authentication on the Bonds and to deliver the Bonds to the Purchaser upon payment of the purchase price for the Bonds and compliance with the other terms and provisions of the Indenture.

4.2. **Deposit of Bond Proceeds**. The Trustee, in accordance with the requirements of the Indenture, is hereby directed to deposit the proceeds of the Bonds into the funds and accounts established under and in accordance with the provisions of the Indenture; subject, however, to the provisions of *Section 4* of the Lease.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, we have signed this Certificate and applied the official seal of the Issuer for delivery concurrently with the issuance and delivery of the Bonds on the date stated above.

CITY OF ABILENE, KANSAS

[SEAL]

____

Chris Ostermann,
Mayor

ATTEST:

____

Penny Soukup, City Clerk

EXHIBIT A

ANALYSIS OF COSTS AND BENEFITS

When Recorded Return to:
Sarah O. Steele, Esq.
Gilmore & Bell, P.C.
100 N. Main, Suite 800
Wichita, Kansas 67202

NOTICE OF LEASE

Public notice is hereby given as of December 9, 2020, that the City of Abilene, Kansas, an incorporated city of the second class duly organized and existing under the laws of the State of Kansas (the "Issuer"), has leased to NARAYAN, INC., a Kansas corporation (the "Tenant"), the property located in Dickinson County, Kansas, described in ***Schedule I*** attached hereto (the "Project") by Lease dated as of December 1, 2020 (the "Lease").

The Lease expires December 31, 2031, provides for an extension of the term, and for early termination in the event of the happening of certain contingencies, provides an option to purchase the Project for prices and on terms set forth therein, and contains various other covenants, terms and conditions. A copy of the Lease is on file in the office of the clerk of the Issuer.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, this Notice of Lease Agreement is executed by authority of the Governing Body of the City of Abilene, Kansas as of the day and year first above written.

CITY OF ABILENE, KANSAS

____
Chris Ostermann, Mayor

____
[SEAL] Penny Soukup, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DICKINSON)

This instrument was acknowledged before me on _______________, 2020 by Chris Ostermann as Mayor and by Penny Soukup as City Clerk of the City of Abilene, Kansas, a municipal corporation.

____
[SEAL] Notary Public

____
Typed or Printed Name of Notary Public

My Appointment Expires:

____

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(Signature Page to Notice of Lease)

SCHEDULE I

LOT TWO (2) AND LOT FOUR (4), BLOCK ONE (1), FINAL PLAT OF MARTIN ADDITION, A REPLAT OF LOTS ONE (1) AND TWO (2), BLOCK ONE (1), FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS

602204.20020\CLOSING DOCS

When Recorded Return to:
Sarah O. Steele, Esq.
Gilmore & Bell, P.C.
100 N. Main, Suite 800
Wichita, Kansas 67202

ASSIGNMENT OF LEASE

WHEREAS, the City of Abilene, Kansas, an incorporated city of the second class, duly organized and existing under the laws of the State of Kansas (the "Issuer"), has entered into a Lease dated as of December 1, 2020 between the Issuer, and NARAYAN, INC., a Kansas corporation, as Tenant (the "Lease"); and

WHEREAS, the Lease covers the property described in ***Schedule I*** attached hereto (the “Project”); and

WHEREAS, the Lease is for a term beginning as of December 1, 2020, and expiring December 31, 2031; and

WHEREAS, the Issuer has issued its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) (the "Bonds"), payable from the revenue to be received by the Issuer under the Lease of the Project, and the Project and the revenue from it have been pledged by the Issuer to payment of the Bonds; and

WHEREAS, BOKF, N.A., Kansas City, Missouri, has been designated as trustee (the “Trustee”) pursuant to the terms of a Trust Indenture dated as of December 1, 2020 (the "Indenture") between the Issuer and the Trustee, and under the Indenture the Trustee is authorized, empowered and directed to perform the duties of the Issuer as lessor under the Lease, including collection of rentals for disbursement to the owners of the Bonds as provided in the Indenture, and to perform, insofar as it legally can, all acts otherwise required of the Issuer under the Lease;

NOW, THEREFORE, in consideration of the acceptance by the Trustee of all of the duties of the Issuer under the Lease, the Issuer, by authority of its governing body, does as of December 9, 2020 assign to the Trustee all of its right, title and interest in the Lease for the purposes of (i) exercising the rights of the Issuer under the Lease to the extent that such rights may be lawfully assigned by the Issuer and excepting only such rights which, in the context in which they appear in the Lease, are capable of being exercised or performed only by the Issuer and (ii) performing and carrying out to the extent directed to do so in the

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Indenture the duties and obligations of the Issuer thereunder, to such extent, and subject to such exception.

This instrument and the rights and obligations created hereby are for the benefit of the owners from time to time of the Bonds. This instrument shall be null and void upon full payment of the Bonds and the expiration of the duties of the Trustee under the Indenture.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, the City of Abilene, Kansas, has set its hand by its Mayor and attested by the City Clerk and has caused the corporate seal of the Issuer to be affixed hereto as of the day and year first above written.

CITY OF ABILENE, KANSAS

____
Chris Ostermann, Mayor

____
[SEAL] Penny Soukup, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DICKINSON)

This instrument was acknowledged before me on _______________, 2020 by Chris Ostermann as Mayor and by Penny Soukup as City Clerk of the City of Abilene, Kansas, a municipal corporation.

____
[SEAL] Notary Public

____
Typed or Printed Name of Notary Public

My Appointment Expires:

____

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(Issuer’s Signature Page to Assignment of Lease)

ACKNOWLEDGMENT AND ACCEPTANCE

I, the undersigned, a duly authorized, qualified and acting trust officer of BOKF, N.A., hereby acknowledge and accept, on behalf of the assignee, the above and foregoing Assignment of Lease by the City of Abilene, Kansas (the "Issuer") of all of its right, title and interest, as lessor, in and to a certain Lease dated as of December 1, 2020, between the Issuer, and NARAYAN, INC., as Tenant.

BOKF, N.A.
Kansas City, Missouri,
as Trustee

By:_________________________
Name:
Title:

ACKNOWLEDGMENT

STATE OF ___________)
) SS.
COUNTY OF ___________)

This instrument was acknowledged before me on the ____ day of _____________ 2020, by ____________________, ___________________ of BOKF, N.A., a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

____
Notary Public

My Appointment Expires:

____

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(Trustee's Signature Page to Assignment of Lease)

SCHEDULE I

LOT TWO (2) AND LOT FOUR (4), BLOCK ONE (1), FINAL PLAT OF MARTIN ADDITION, A REPLAT OF LOTS ONE (1) AND TWO (2), BLOCK ONE (1), FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS

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BEFORE THE BOARD OF TAX APPEALS
OF THE STATE OF KANSAS

CERTIFICATE OF ISSUANCE OF INDUSTRIAL REVENUE BONDS

Pursuant to the provisions of K.S.A. 12-1744c, as amended, this is to certify that:

The City of Abilene, Kansas issued its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) dated December 1, 2020 in the principal amount of $______________, on the 9th day of December, 2020.

City of Abilene, Kansas

By: ________________________________
Authorized Officer

BOTA Filing No.:_________________

VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

Sarah O. Steele, of Gilmore & Bell, P.C., Wichita, Kansas, of lawful age, being first duly sworn upon oath, deposes and states:

That the law firm of Gilmore & Bell, P.C., served as Bond Counsel for the above mentioned issue of Taxable Industrial Revenue Bonds; that she has read the foregoing Certificate of Issuance and knows of her own personal knowledge that the statements set forth therein are true and correct.

By: ____________________________________
Sarah O. Steele

SUBSCRIBED AND SWORN to before me this ____ day of_____________, ____.

____
[SEAL] Notary Public

My Appointment Expires: ___________________

TRUSTEE'S RECEIPT AND CLOSING CERTIFICATE

Not Exceeding $8,000,000
City of Abilene, Kansas
Taxable Industrial Revenue Bonds
Series 2020
(NARAYAN, INC.)

The undersigned, a duly authorized trust officer of BOKF, N.A., Kansas City, Missouri (the "Trustee"), the trustee designated in a Trust Indenture dated as of December 1, 2020 (the "Indenture") between the City of Abilene, Kansas (the "Issuer") and the Trustee, which authorizes and secures the Issuer's Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) (the "Bonds"), hereby certifies on behalf of the Trustee:

(1) The Trustee hereby ratifies and confirms its acceptance of the duties specified for it in the Indenture, the Site Lease and the Lease (the "Bond Documents") executed and delivered in connection with the issuance of the Bonds. Each of the Bond Documents to which the Trustee is a party have been duly executed and delivered on behalf of the Trustee by duly authorized officers of the Trustee and constitute valid and binding obligations of the Trustee, enforceable in accordance with their terms.

(2) The Trustee is a banking association or corporation duly organized under the banking laws of the United States of America or one of the states thereof, and has full power and authority to act as trustee, paying agent and bond registrar as provided in the Indenture and to discharge the duties imposed upon it by the Bond Documents.

(3) Pursuant to and in accordance with the provisions of the Indenture and the written request and authorization of the Issuer, prior to the delivery of the Bonds, the Certificate of Authentication on the Bonds was signed on behalf of the Trustee by a duly authorized officer or signatory of the Trustee, who was at the time of the authentication of the Bonds and is at the date hereof a duly elected or appointed, qualified and acting officer or signatory of the Trustee, authorized to perform the acts described herein.

(4) The Trustee has authenticated and is holding as custodian certificates representing the principal amount of the Bonds initially being issued pursuant to the Bond Purchase Agreement for the account of NARAYAN, INC., as Bondowner, as of the delivery of this certificate.

(5) The Trustee acknowledges receipt on behalf of the Issuer of payment orders in the form set forth in *Appendix A* of the Lease equal to the purchase price of the Bonds initially issued and conformed copies of the Bond Documents and bond certificates representing the entire principal amount of Bonds issued.

(6) The Trustee acknowledges receipt of copies of each of the documents specified in the Indenture which are required to be filed with the Trustee prior to or simultaneously with the delivery of the Bonds.

[balance of this page intentionally left blank]

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IN WITNESS WHEREOF, the Trustee has caused this certificate to be executed by a duly authorized trust officer as of the 9th day of December, 2020.

BOKF, N.A.
Kansas City, Missouri
as Trustee

By: ___________________________________
Name:
Title:

602204.20020\CLOSING DOCS

(Signature Page to Trustee's Closing Certificate)

TENANT'S CLOSING CERTIFICATE

Not Exceeding $8,000,000
City of Abilene, Kansas
Taxable Industrial Revenue Bonds
Series 2020
(NARAYAN, INC.)

We, the undersigned, hereby certify that we are the duly elected, qualified and acting __________________ and __________________, respectively, of NARAYAN, INC., a Kansas corporation (the "Tenant"), and as such we are familiar with the books and records of the Tenant and have all authority necessary to execute this Certificate on behalf of the Tenant.

In connection with the issuance of not exceeding $8,000,000 principal amount of Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) (the "Bonds"), by the City of Abilene, Kansas (the "Issuer"), we hereby further certify for and on behalf of the Tenant as follows:

1. **CORPORATE ORGANIZATION AND AUTHORITY**

1.1. **Due Organization.** The Tenant is a corporation duly incorporated, organized and in good standing under the laws of the State of Kansas.

1.2. **Articles of Incorporation and Bylaws.** The copy of the Articles of Incorporation of the Tenant attached hereto as *Exhibit A* is a true, complete and correct copy of said Articles of Incorporation, as amended to date, as certified by the Secretary of the State of Kansas, and said Articles of Incorporation have not been further amended and are in full force and effect as of the date hereof. The copy of the Bylaws of the Tenant attached hereto as *Exhibit B* is a true, complete and correct copy of said Bylaws, as amended to date, and said Bylaws have not been further amended and are in full force and effect as of the date hereof.

1.3. **Incumbency of Officers.** The persons named below were on the date or dates of the execution of the documents listed in *Section 2.2* below, and are on this date, the duly appointed or elected, qualified and acting officers of the Board of Directors of the Tenant, holding the respective offices set opposite their names, and the signatures at the end of this Certificate are their true and genuine signatures:

Name	Title

2. **CORPORATE PROCEEDINGS AND LEGAL DOCUMENTS**

2.1. **Corporate Proceedings.** A true and correct copy of the resolution lawfully adopted by the Board of Directors of the Tenant in accordance with the laws of the Tenant's state of incorporation and its governing documents, attached hereto as *Exhibit C* (the "Resolution"), has been furnished to the Issuer to be included in the transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds; such proceedings of the Tenant have not been modified, amended or repealed and are in full force and effect as of the date hereof.

2.2. **Execution of Documents.** The following described documents (the "Tenant Documents") have been executed and delivered for and on behalf of the Tenant by its duly authorized officers pursuant to and in full compliance with the Resolution; the copies of the Tenant Documents to be included in the Transcript are true, complete and correct copies or counterparts as executed and delivered by the Tenant and are in substantially the same form and text as the copies of such documents which were presented before the Board of Directors of the Tenant and approved by the Resolution; the Tenant Documents have not been amended or modified except with the approval of an authorized officer of the Tenant and the other parties thereto, and are in full force and effect as of the date hereof:

(a) Site Lease dated as of December 1, 2020 (the "Site Lease"), between the Tenant, as lessor and the Issuer, as lessee.

(b) Lease dated as of December 1, 2020 (the "Lease"), between the Issuer and the Tenant.

(c) Bond Purchase Agreement dated as of December 1, 2020 (the "Bond Purchase Agreement"), among the Issuer, the Tenant and NARAYAN, INC., Abilene, Kansas.

2.3. **Authorization of Documents.** The Tenant has duly authorized, by all necessary action, the execution, delivery and due performance of the Tenant Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Tenant in order to carry out, give effect to and consummate the transactions contemplated by the Tenant Documents. The Tenant Documents, as executed and delivered, constitute legal, valid and binding obligations of the Tenant enforceable in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties).

2.4. **Representations in the Tenant Documents.** Each of the representations of the Tenant set forth in the Tenant Documents is true, accurate and correct in all material respects as of the date hereof, as if made on the date hereof, and all covenants and conditions to be complied with and obligations to be performed by the Tenant under the Tenant Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. **No Event of Default.** At the date of this Certificate, no Event of Default under the Tenant Documents has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, would constitute an Event of Default under the Tenant Documents.

2.6. **Designation of Authorized Tenant Representative.** The Tenant hereby designates the following persons as the Authorized Tenant Representative for purposes of the Indenture and the Lease:

Name	Title

3. DESCRIPTION OF THE PROJECT AND USE OF BOND PROCEEDS

3.1. **Location and Description of Project.** The proceeds of the Bonds are being used to finance the costs of the Project (as defined in the Lease). The Project consists of the acquisition, construction and equipping of a hotel facility. The Project is located within the corporate limits of the Issuer.

3.2. **Sources and Uses of Funds.** The estimated sources of funds, including the proceeds of the Bonds and other available funds of the Tenant, and the expected application thereof, are as set forth on *Exhibit D* hereto.

4. **LEGAL MATTERS**

4.1. **No Litigation.** There is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Tenant, its officers or property, challenging the validity of the Tenant Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Tenant of its obligations thereunder, or challenging the acquisition or operation of the Project. Further, no litigation, proceeding, or investigation is pending or, to the knowledge of the officers of the Tenant signing this certificate, threatened, against the Tenant, its officers or property except (i) that arising in the normal course of the Tenant's business operations, and being defended by or on behalf of the Tenant, in which the probable ultimate recovery and estimated defense costs and expenses, in the opinion of the Tenant's management, will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Tenant, would not, in the opinion of the Tenant's management, materially adversely affect the Tenant's operations or condition, financial or otherwise.

4.2. **Title to the Project.** To the best of our knowledge, based on a title ownership and encumbrance report, there is at present no defect in the title to the land on which the Project is or will be constructed, or any other property described in the Indenture or the Lease as part of the Project, other than Permitted Encumbrances, if any (as defined in the Lease), which may materially interfere with or impair the operation of, or materially adversely affect the value of, the Project or prevent or limit the carrying out of the purposes for which the same is being used by the Tenant.

4.3. **Approvals.** All currently necessary approvals, whether legal or administrative, have been obtained from any applicable federal, state or local entity or agency required in connection with the operation of the Project by Tenant, as defined in the Lease.

4.4. **Compliance with Existing Covenants.** The Tenant is not in material default under nor violating in any material respect (i) any material provision of its Articles of Incorporation or Bylaws or (ii) any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it is bound, or to which it or any of its assets is subject. Neither the execution and delivery of the Tenant Documents nor compliance with the terms, conditions and provisions thereof will conflict with or constitute a material default under, any of the foregoing.

4.5. **Legal Counsel.** For the purpose of rendering this Certificate, we have been counseled by the Tenant's legal counsel as to the purpose of the foregoing certifications and the meanings of the matters set forth in the foregoing certifications. We understand that the factual information and representations contained in this Certificate will be relied upon by the Issuer in the issuance of the Bonds.

5. **ENVIRONMENTAL MATTERS.**

5.1. **Permits.** All required federal, state and local permits concerning or related to environmental protection and regulation concerning the Tenant's operations have been secured and are current. Upon occupancy of the Project, Tenant will obtain any required permits for its operations to be conducted on and in the Project.

5.2. **Compliance with Applicable Permits, Laws and Regulations.** Tenant is and has been in full compliance with any such environmental permits, and any other requirements under all applicable Environmental Laws (as defined in the Lease).

5.3. **No Pending Actions.** There are no pending actions against Tenant under any Environmental Law (as defined in the Lease), and Tenant has not received notice in any form of such an action, or of a possible action.

5.4. **Releases of Hazardous Substances.** Tenant has exercised diligence to determine whether there have been any past or current releases of hazardous substances on, over, under, at, from, into or onto the Project; it has not been able to discover any such releases, and has concluded that there are none. The terms "release" and "hazardous substance" are as understood under CERCLA and other applicable Environmental Laws (as defined in the Lease).

5.5. **Present Conditions.** Tenant is not aware of any environmental condition, situation or incident on, at or concerning the Project which could give rise to an action against Tenant or to liability against Tenant under any Environmental Law (as defined in the Lease) or any common law theory of liability.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, we have signed this certificate for delivery concurrently with the issuance of the Bonds.

NARAYAN, INC.

[SEAL]

By: ______________________________
Name:
Title:

ATTEST:

By: ______________________________
Name:
Title:

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(Signature Page to Tenant's Closing Certificate)

EXHIBIT A

ARTICLES OF INCORPORATION

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EXHIBIT B

BYLAWS

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EXHIBIT C

CORPORATE RESOLUTION

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EXHIBIT D

SOURCES AND USES OF FUNDS

Sources of Funds:

Principal Amount of the Bonds	$8,000,000.00
Total	**$8,000,000.00**

Uses of Funds:

Acquisition of Land	
Construction	
Equipment & Furnishings	
Engineering/architectural fees	
Total	**$8,000,000.00**

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EXHIBIT E

CERTIFICATE OF GOOD STANDING

602204.20020\CLOSING DOCS

[FORM OF OPINION FOR COUNSEL TO ISSUER]

December 9, 2020

Gilmore & Bell, P.C.
Wichita, Kansas

NARAYAN, INC.
Abilene, Kansas

Governing Body
City of Abilene, Kansas

Re: Not Exceeding $8,000,000
City of Abilene, Kansas
Taxable Industrial Revenue Bonds
Series 2020
(NARAYAN, INC.)
(the "Bonds")

Ladies and Gentlemen:

I am City Attorney for the City of Abilene, Kansas (the "Issuer"), and acting as its counsel I have advised the Issuer in connection with its Ordinance No. [_____] (the "Ordinance"); a Lease dated as of December 1, 2020, between the Issuer and NARAYAN, INC. (the "Tenant"); a Trust Indenture dated as of December 1, 2020 between the Issuer, and BOKF, N.A., Kansas City, Missouri, as Trustee; a Bond Purchase Agreement among the Issuer, the Tenant and NARAYAN, INC., Abilene, Kansas, as Original Purchaser (collectively, the "Bond Documents") and certain other certificates and proceedings relating to the issuance by the Issuer of the Bonds and the execution and delivery by officials of the Issuer of the Bond Documents.

Acting as such City Attorney, I have become acquainted with the affairs of the Issuer pertaining to the Bonds, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary in order to give the opinions expressed herein.

You are advised that, in my opinion:

1. The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.

2. The Issuer, acting through a majority of its governing body, did pass the Ordinance on November 23, 2020; it has been signed and published as required by law, and is now in full force and effect.

3. The Issuer has full power and authority to issue the Bonds and to execute and deliver the Bond Documents and all other documents reasonably necessary in connection with the transactions contemplated thereby, and the Bonds and the Bond Documents have been executed and delivered by the

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Issuer in the manner authorized by law and the Ordinance, enforceable in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principal of equity or the exercise of judicial discretion.

4. To my actual knowledge, after reasonable investigation, the enactment of the Ordinance, and the execution, delivery and performance of the Bond Documents do not and will not conflict with or constitute on the part of the Issuer a breach or default under (i) any ordinance, agreement, indenture or instrument to which the Issuer is a party, or by which it or any of its property may be bound, or (ii) any regulation, decree or order of any court, agency or governmental body having jurisdiction over the Issuer or any of its property.

5. To my actual knowledge, after reasonable investigation, there is no litigation, proceeding or investigation pending in any court or before any administrative agency or body, or to the knowledge of the officials of the Issuer, threatened, (i) to restrain or enjoin the issuance or delivery of the Bonds, or the execution, delivery or performance by the Issuer of its obligations under the Bond Documents; (ii) in any way contesting or affecting the validity or enforceability of the Ordinance, the Bonds or the Bond Documents; (iii) contesting the powers of the Issuer to issue the Bonds or enter into the Bond Documents; (iv) challenging the acquisition, equipping or operation of the Project (as defined in the Bond Documents); or (v) affecting in any manner the organization of the Issuer or its status as an incorporated city of the State of Kansas.

No authority or proceeding for the issuance of the Bonds or the execution and delivery of the Bond Documents has been repealed, revoked or rescinded.

I have not been engaged nor have I undertaken to review the accuracy completeness or sufficiency of any offering material relating to the Bonds, except as to the information contained therein regarding the Issuer, and I otherwise express no opinion relating thereto.

No opinion is expressed regarding the includability in gross income for Federal income tax purposes, or the exemption from taxation under the laws of the State of Kansas, present or future, of the interest on the Bonds.

Very truly yours,

602204.20020\CLOSING DOCS

BOND PREPARATION CERTIFICATE

This will certify that the undersigned has caused to be prepared and delivered one (1) original Bond certificate in the aggregate principal amount not exceeding $8,000,000 for the City of Abilene, Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.); and 2 sample Bonds.

GILMORE & BELL, P.C.

By: ______________________________

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PURCHASER'S CERTIFICATE AND RECEIPT

Not Exceeding $8,000,000
City of Abilene, Kansas
Taxable Industrial Revenue Bonds
Series 2020
(NARAYAN, INC.)

NARAYAN, INC. (the "Purchaser"), hereby certifies that the Purchaser received from BOKF, N.A., Kansas City, Missouri, as Trustee on behalf of the City of Abilene, Kansas (the "Issuer") a certificate representing the Issuer's Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.), in an aggregate principal amount of not exceeding $8,000,000, dated as of December 1, 2020. Issued by the Issuer and received by the Purchaser was one (1) Bond certificate in fully registered form, numbered R-1, registered as requested by the Purchaser. The Bonds will not be re-offered to the public.

Said Bond certificate has been signed by the facsimile signature of the Mayor of the Issuer, attested by the facsimile signature of the City Clerk with the corporate seal of the Issuer affixed thereon, and has been authenticated by an authorized officer of the Trustee.

DATED December 9, 2020.

NARAYAN, INC.

By: ________________________________
Name:
Title:

602204.20020\CLOSING DOCS

GILMORE & BELL, P.C.
NOVEMBER 23, 2020

CITY OF ABILENE, KANSAS

AS ISSUER

AND

BOKF, N.A.
KANSAS CITY, MISSOURI

AS TRUSTEE

TRUST INDENTURE

DATED AS OF DECEMBER 1, 2020

NOT TO EXCEED $8,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

602204.20020\INDENTURE

TRUST INDENTURE

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ARTICLE VI REVENUES AND FUNDS

ARTICLE VII SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

ARTICLE VIII GENERAL COVENANTS AND PROVISIONS

ARTICLE IX REMEDIES ON DEFAULT

ARTICLE X THE TRUSTEE

TRUST INDENTURE

THIS TRUST INDENTURE, dated as of December 1, 2020 (the "Indenture"), between the City of Abilene, Kansas (the "Issuer"), and BOKF, N.A., Kansas City, Missouri, as Trustee (the "Trustee");

WITNESSETH:

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

WHEREAS, pursuant to such authorization, the Issuer's governing body has passed an ordinance authorizing the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.), in the principal amount not to exceed $8,000,000 (the "Series 2020 Bonds"), for the purpose of providing funds for the acquisition, construction, furnishing and equipping of a hotel facility (the "Project" as hereinafter more fully described), and authorizing the Issuer to lease the Project to NARAYAN, INC., a Kansas corporation (the "Tenant"); and

WHEREAS, pursuant to such ordinance, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Series 2020 Bonds and any Additional Bonds (collectively the "Bonds"), as hereinafter provided, and (ii) to enter into a Lease Agreement of even date herewith (the "Lease"), between the Issuer and the Tenant, under which the Original Proceeds (as hereinafter defined) shall be used for the acquisition, construction and equipping of the Project and pursuant to which Issuer shall lease the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Series 2020 Bonds as the same become due; and

WHEREAS, all things necessary to make the Series 2020 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to make this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of, premium, if any, and interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series 2020 Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Series 2020 Bonds by the Original Purchaser thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee and its successors and assigns, and grant to the Trustee and its successors and assigns a security interest in the property described in paragraphs (a) and (b) below (said property being herein referred to as the "Trust Estate"), to wit:

(a) All right, title and interest of the Issuer in, to and under the Lease (including, but not limited to, the right to enforce any of the terms thereof but excluding the Unassigned Issuer's Rights), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Lease;

(b) All moneys and securities held by the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the Issuer, by the Tenant or by anyone in their behalf, or with their written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and assigns;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of the Series 2020 Bonds and any Additional Bonds issued and Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the Issuer shall pay, or cause to be paid, the principal of, premium, if any, and interest on all the Bonds, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in *Article XII* hereof), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Indenture and the Lease, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

"Act" means K.S.A. 12-1740 *et seq.*

"Additional Bonds" means any Bonds issued in addition to the Series 2020 Bonds pursuant to *Section 2.09* of this Indenture.

“Authorized Denomination” means $100,000 and any integral multiple of $100 in excess thereof.

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

"Bond" or **"Bonds"** means the Series 2020 Bonds and any Additional Bonds.

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

“Bond Purchase Agreement” means the Bond Purchase Agreement dated as of December 1, 2020, between the Issuer and the Original Purchaser.

"Bond Registrar" means the Trustee**.**

"Business Day" means a day which is not a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

"Change of Circumstances" means the occurrence of any of the following events:

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

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

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

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

"Construction Period" means the period from the beginning of acquisition or construction of Improvements to their Completion Date.

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

“**Dated Date**” means December 1, 2020.

"Debt Service Fund" means the "City of Abilene, Kansas Debt Service Fund (NARAYAN, INC.)" authorized and established with the Trustee pursuant to the Indenture.

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

"Draw Date" means each date following the Issue Date on which the Original Purchaser makes payment of all or part of the Purchase Price.

"Event of Default" means one of the following events:

(a) Default in the due and punctual payment of any interest on any Bond;

(b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond on the Stated Maturity or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in any Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof shall have been given to the Issuer and the Tenant by the Trustee, or to the Trustee, the Issuer and the Tenant by Owner(s) of Bonds owning not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default shall be such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Tenant within such period and diligently pursued until such default is corrected; or

(d) An "Event of Default" as defined in the Lease.

"Funds and Accounts" means funds and accounts created pursuant to or referred to in *Section 5.01* hereof.

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

"Improvements" means all buildings, building improvements, machinery, furnishings and equipment purchased in whole or in part from the proceeds of the Bonds.

"Indenture" means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of *Article XI* of this Indenture.

"Interest Payment Date" means any date on which any interest is payable on any Bond. With respect to the Series 2020 Bonds, it means December 31, 2031.

"Investment Contract" means an agreement to deposit all or any portion of the proceeds of the sale of the Bonds with a bank, with the deposits to bear interest at an agreed rate.

"Investment Securities" means any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Trustee pursuant to this Indenture:

(a) Government Securities;

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

(c) savings or other depository accounts or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee and its affiliates), provided that such deposits shall be either of a bank, trust company or national banking association continuously and fully insured by the Federal Deposit Insurance Corporation, or continuously and fully secured by excess deposit insurance purchased through a private insurer, or such securities as are described above in clauses (a) or (b), which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such deposits and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association accepting such deposit or issuing such certificate of deposit;

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

(e) any investment in shares or units of a money market fund or trust rated “AAAm” or “AAAm-G” or better by S&P Global Ratings (including one offered, managed or otherwise made available through the Trustee or any affiliate);

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

“Issue Date” means the date when the Issuer delivers the Bonds to the Original Purchaser in exchange for the initial payment of all or part of the Purchase Price.

"Issuer" means the City of Abilene, Kansas, a city of the second class organized under the laws of the State, and its successors and assigns.

"Land" means the real property (or interests therein) described in *Schedule I* to the Lease.

"Lease" means the Lease Agreement delivered concurrently with this Indenture between the Issuer and the Tenant, as from time to time amended and supplemented in accordance with the provisions thereof and of *Article XI* of this Indenture.

“Lender” means Plains State Bank, Bank VI, and/or the U.S. Small Business Administration, or their designees, nominees, successors or assigns, or any other bank or financial institution, or its designees, nominees, successors or assigns, from which the Tenant has or may at any future time borrow funds to finance all or a portion of the Project and in whose favor the Tenant granted or will grant the Mortgage as collateral for the loan.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

“Mortgage” means any mortgage, security agreement, assignment of leases and rents, or similar instrument granted by the Tenant to the Lender at any time related to the Project, and any future mortgage, security agreement, assignment of leases and rents, or similar instrument to be granted by the Tenant to the Lender related to the Project, and any modifications, replacements, or refinancing thereof.

"Notice Representative" means:

(1) With respect to the Tenant, its President at its Notice Address (as defined in the Lease).

(2) With respect to the Issuer, its duly acting clerk at its Notice Address (as defined in the Lease).

(3) With respect to the Trustee, any corporate trust officer at its Notice Address (as defined in the Lease).

"Original Proceeds" means all sale proceeds, including accrued interest, from sale of the Series 2020 Bonds to the Original Purchaser and all investment earnings credited to the Project Fund prior to the Completion Date.

"Original Purchaser" means NARAYAN, INC., Abilene, Kansas.

"Outstanding" means, as of a particular date all Bonds issued, authenticated and delivered under this Indenture (including any Supplemental Indentures), except:

(a) Bonds canceled by the Trustee or delivered to the Trustee for cancellation pursuant to this Indenture;

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee and irrevocably pledged to such payment or redemption in accordance with the provisions of *Section 12.02* of this Indenture; and

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

"Owner" means the owner of any Bond as shown on the registration books of the Trustee maintained as provided in this Indenture.

"Paying Agent" means the Trustee.

"Payment Date" means any Interest Payment Date or any Principal Payment Date.

"Person" means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

"Principal Payment Date" means any date on which principal on any Bond is due and payable, whether at the Stated Maturity or earlier required redemption thereof. With respect to the Series 2020 Bonds, the Principal Payment Date is December 31, 2031.

"Project" means the Land and the Improvements, together with any Project Additions.

"Project Additions" means any Improvements acquired, constructed or installed from proceeds of any series of Additional Bonds authorized and issued pursuant to this Indenture. It also includes any alterations or additions made to the Project to the extent provided in *Articles XI* and *XII* of the Lease.

"Project Costs" means those costs incurred in connection with the Land, and the construction or installation of any Improvements, including:

(a) all costs and expenses necessary or incident to the acquisition of the Land and such of the Improvements as are acquired, constructed or in progress at the date of such issuance of the Series 2020 Bonds;

(b) fees and expenses of architects, appraisers, surveyors, engineers and other professional consultants for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of acquisition, construction, preparation of plans, drawings and specifications and supervision of construction and installation, as well as for the performance of all other duties of architects, appraisers, surveyors, engineers and other professional consultants in relation to the acquisition, construction or installation of the Improvements or the issuance of Bonds;

(c) all costs and expenses incurred in constructing, acquiring or installing, furnishing or equipping the Improvements;

(d) payment of interest actually incurred on any interim financing obtained from a lender unrelated to the Tenant for acquisition or performance of work on the Improvements prior to the issuance of the Bonds;

(e) the cost of the title insurance policies and the cost of any insurance and performance and payment bonds maintained during the Construction Period in accordance with *Article VI* of the Lease, respectively;

(f) interest accruing on the Series 2020 Bonds prior to the Completion Date, if and to the extent Original Proceeds deposited to the credit of the Debt Service Fund pursuant to *Section 602* of this Indenture are insufficient for payment of such interest; and

(g) Costs of Issuance.

"Project Fund" means the "City of Abilene, Kansas Project Fund (NARAYAN, INC.)" authorized and established with the Trustee pursuant to the Indenture.

"Purchase Price" means the amount set forth in the Bond Purchase Agreement.

"Record Date" means the fifteenth day of the month preceding the Interest Payment Date, or if such date is not a Business Day, the Business Day immediately preceding such date.

"Redemption Date" means, when used with respect to any Bond to be redeemed, the date fixed for the redemption of such Bond pursuant to the terms of this Indenture.

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

"Series 2020 Bonds" means the City of Abilene, Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) dated December 1, 2020 in the principal amount not to exceed $8,000,000.

"Site Lease" means that certain Site Lease dated as of December 1, 2020 between the Tenant, as lessor, and the Issuer, as lessee.

"State" means the State of Kansas.

“Stated Maturity” when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Indenture as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“Sublease” means a lease between the Tenant, as lessor, and the Subtenant, as lessee, for the use and operation of the Project.

“Subtenant” means DHRUV, LLC, a Kansas limited liability company, its successors and assigns.

"Supplemental Indenture" means any indenture supplementing or amending this Indenture entered into by the Issuer and the Trustee pursuant to *Article XI* of this Indenture.

"Tenant" means NARAYAN, INC., a Kansas corporation, its successors and assigns.

"Trust Estate" means the Trust Estate described in the Granting Clauses of this Indenture.

"Trustee" means BOKF, N.A., Kansas City, Missouri, a banking corporation or association incorporated under the laws of the United States or one of the states thereof, in its capacity as trustee, bond registrar and paying agent, and its successor or successors serving as Trustee under this Indenture.

“Unassigned Issuer’s Rights” mean the rights of the Issuer pursuant to the Lease to indemnification, to consent, to receive notice, to receive purchase option payments, to be insured or to receive money for its own account for payment of fees or expenses advanced by the Issuer in connection with the Lease, all in accordance with the terms of the Lease.

Section 1.02. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. 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, trusts and corporations, including public bodies, as well as natural persons.

(b) Wherever in this Indenture 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 Indenture to designated "Articles", "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Indenture as originally executed. The words "herein", "hereof", "hereunder" and other words of similar import refer to this Indenture 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 Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 2.01. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as "City of Abilene, Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.)," with such other appropriate particular designation added to or incorporated in such title for the Bonds of any particular series of Additional Bonds as the Issuer may determine. The total principal amount of Bonds that may be issued hereunder is hereby expressly limited to an amount not to exceed $8,000,000 principal amount of Series 2020 Bonds and any Additional Bonds permitted hereunder.

Section 2.02. Limited Nature of Obligations.

(a) The Bonds and the interest thereon shall be limited obligations of the Issuer payable solely and only from the net earnings and revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease (including, in certain circumstances, Bond proceeds and income from the temporary investment thereof and proceeds from sale of the Project, insurance proceeds and condemnation awards, if any), and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owner(s) of Bonds, as provided in this Indenture. The Bonds and the interest thereon shall not be a debt or general obligation of the Issuer or the State, or any municipal corporation thereof, and neither the Bonds, the interest thereon, nor any judgment thereon or with respect thereto, are payable in any manner from tax revenues of any kind or character. The Bonds shall not constitute an indebtedness or a pledge of the faith and credit of the Issuer, the State or any municipal corporation thereof, within the meaning of any constitutional or statutory limitation or restriction.

(b) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom as hereinabove provided. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 2.03. Denomination, Numbering and Dating of Bonds.

(a) The Bonds shall consist of fully registered Bonds in an Authorized Denomination. The Bonds shall be substantially in the form set forth in *Article IV* of this Indenture. The Bonds of each series of Bonds shall be numbered in such manner as the Trustee shall determine.

(b) The Bonds of each series of Bonds shall be dated as provided in this Indenture or the Supplemental Indenture authorizing the issuance of such series of Bonds. The Bonds shall bear interest from their effective date of registration. The effective date of registration shall be the Interest Payment Date next preceding the date of authentication thereof by the Trustee, unless such date of authentication shall be an Interest Payment Date, in which case the effective date of registration shall be as of such date of authentication, or unless the date of authentication shall be prior to the first Interest Payment Date for such series of Bonds, in which case the effective date of registration shall be the dated date of such series of Bonds; provided, however, that if payment of the interest on any Bonds of any series shall be in default at the time of authentication of any Bond certificates issued in lieu of Bonds surrendered for transfer or exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

Section 2.04. Method and Place of Payment of Bonds. The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to any Owner of $500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank ABA routing number and account number to which such Owner wishes to have such transfer directed.

Final payment of principal and redemption premium, if any, on all Bonds shall be made by check or draft upon the presentation and surrender of the certificate(s) representing such Bonds at the Maturity thereof at the principal corporate trust office of the Paying Agent.

So long as the Tenant is the sole Bondowner, the Trustee may make payments of principal and interest on such Bonds by internal journal entry on the records of the Trustee, and the Trustee shall record the amount of such debt service payments on the registration books for the Bonds maintained by the Trustee on behalf of the Issuer.

Section 2.05. Execution and Authentication of Bonds.

(a) Bond certificates shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon. In case any officer whose signature or facsimile thereof appears on any Bond certificates shall cease to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond certificate may be signed by such persons as at the actual time of the execution of such Bond certificate shall be the proper officers to sign although on the date of issuance of such Bond such persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in *Article IV* hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed. Such executed Certificate of Authentication upon any Bond certificate shall be conclusive evidence that the Bonds described in such Bond certificate have been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond certificate shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee, but it shall not be necessary that the same officer or employee sign the Certificate of Authentication on all of the Bond certificates that may be delivered hereunder at any one time.

Section 2.06. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of the Series 2020 Bonds and any Additional Bonds as provided in this Indenture.

(b) Bonds may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender of the certificate(s) representing such Bonds to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner(s) of Bonds or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds new Bond certificate(s), registered in the name of the transferee, of any Authorized Denomination in an aggregate principal amount equal to the principal amount of such Bonds, of the same series and maturity and bearing interest at the same rate. In the event that any Owner(s) of Bonds fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner(s) of Bonds sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code of 1986, as amended, such amount may be deducted by the Paying Agent from amounts otherwise payable to any Owner(s) of Bonds.

(c) In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bond certificates in accordance with the provisions of this Indenture. All Bond certificates surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee. The Issuer or the Trustee may make a charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid by the Owner(s) of Bonds before any such new Bond certificate shall be delivered. Neither the Issuer nor the Trustee shall be required to make any such exchange or transfer of Bonds on or after the Record Date preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) Any proposed transfer of Series 2020 Bonds shall be made by the Trustee only upon delivery to the Trustee, the Issuer and the Tenant of an opinion of counsel to the proposed transferor either (a) that the proposed transfer is a part of a transaction exempt from the application of the Securities Act of 1933, as amended (the "1933 Act"), or (b) that the transfer is a part of a transaction that is in compliance with the registration provisions of the 1933 Act, which opinion shall be in form and substance acceptable to both the Trustee, the Issuer and the Tenant.

(e) All of the duties of the Trustee set forth in this *Section 2.06* may be performed by any co-trustee or co-paying agent appointed by the Trustee, to the extent specified in the instrument appointing such co-trustee or co-paying agent.

(f) The Issuer and the Trustee consent to the Mortgage (as defined in the Lease) and the pledge of the Bonds to the Lender.

Section 2.07. Persons Deemed Owners of Bonds. The person in whose name any Bond shall be registered as shown on the registration books required to be maintained by the Trustee by this Article shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of, or on account of the principal of and premium, if any, and, interest on any such Bond shall be made only to or upon the order of such registered Owner or a duly constituted legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.08. Authorization of Series 2020 Bonds.

(a) The Series 2020 Bonds shall be issued by the Issuer in an aggregate principal amount not exceeding $8,000,000 and shall be purchased by the Original Purchaser thereof at their par principal amount for the purpose of providing the funds to pay, or reimburse the Tenant, for payment of Project Costs. The Series 2020 Bonds shall be in substantially the form attached hereto as *Exhibit A*. The Series 2020 Bonds shall be in the aggregate original principal amount of the amount advanced to the Project Fund by the Original Purchaser of the Series 2020 Bonds on the Issue Date, and each amount subsequently advanced to the Project Fund on each Draw Date, made by presenting to the Trustee a completed requisition for payment of Project Costs in the form attached as *Exhibit A* to the Lease, but not exceeding an aggregate principal amount of $8,000,000. Advances on the Series 2020 Bonds shall be made on the Issue Date and on each Draw Date; provided, however, that all advances of additional principal for the Series 2020 Bonds must occur, if at all, by the Completion Date.

Pending advancement by the Original Purchaser of the entire authorized principal amount of Series 2020 Bonds, or receipt from the Tenant of a Certificate of Completion, whichever comes first, the Trustee shall retain custody of all Series 2020 Bond certificates. The Trustee shall endorse the Schedule of Principal Amounts Advanced attached to the Series 2020 Bond certificate to reflect an increase in principal amount Outstanding each time the Original Purchaser advances money to the Project Fund to pay Project Costs as requested by the Tenant. Each such endorsement reflecting an increase in Outstanding principal amount shall constitute the Trustee's authentication of the issuance of Series 2020 Bonds reflected by such endorsement. The Issuer hereby irrevocably authorizes the Trustee to so endorse each Series 2020 Bond certificate; however, failure by the Trustee to effect any such endorsement or any error in such endorsement shall not limit the Issuer's obligations under the Series 2020 Bond certificate with respect to principal amounts which are in fact Outstanding. The Trustee shall, upon request, send written confirmation to the Tenant and the Issuer of the amount of Series 2020 Bonds Outstanding on any date. The Trustee agrees that immediately upon the making of any endorsement on the Schedule of Principal Amounts Advanced attached to the Series 2020 Bond certificate, the Trustee will forward a copy of such Schedule of Principal Amounts Advanced to Bond Counsel, via fax, email or overnight delivery, to the address set forth below:

Gilmore & Bell, P.C.
100 North Main, Suite 800
Wichita, Kansas 67202
Attention Sarah O. Steele, Esq.
Fax: (316) 262-6523
Email: ssteele@gilmorebell.com

The Series 2020 Bonds shall be payable as set forth in *Appendix A* and shall be dated, bear interest, and be subject to redemption and transfer as set forth in such forms. All of the terms and provisions of the Series 2020 Bonds as set forth in *Appendix A* are incorporated into this Indenture by reference. The Series 2020 Bonds and the interest and redemption premium, if any, thereon will not be a general obligation of the Issuer, but shall be payable solely out of the revenues derived by the Issuer pursuant to the Lease (except to the extent payable from proceeds of sale or re-letting of the Project).

(b) Interest on the Series 2020 Bonds shall be payable to the Owners thereof in accordance with the provisions of *Article II* hereof.

(c) The Trustee is hereby designated as the Issuer's Paying Agent for the payment of the principal of, premium, if any, and interest on the Series 2020 Bonds. The Trustee may appoint one or more financial institutions to act as co-paying agent for the Series 2020 Bonds.

(d) Upon the original issuance and delivery of the Series 2020 Bonds, the effective date of registration thereof shall be their Dated Date.

(e) The Series 2020 Bonds shall be substantially in the form and manner set forth in *Article IV* hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(i) An original or certified copy of the Ordinance enacted by the Issuer's governing body authorizing the issuance of the Series 2020 Bonds and the execution of this Indenture and the Lease.

(ii) An executed counterpart of this Indenture.

(iii) An executed counterpart of the Lease.

(iv) An executed counterpart of the Site Lease.

(v) An opinion of Bond Counsel to the effect that the Series 2020 Bonds constitute valid and legally binding obligations of the Issuer and exempt from Kansas income taxation, subject to such limitations and restrictions as shall be described therein.

(vi) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2020 Bonds.

(f) When the documents specified in subsection (e) of this Section shall have been filed with the Trustee, and when certificates representing all the Series 2020 Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2020 Bonds to or upon the order of the Original Purchaser thereof, but only upon payment to the Trustee of the Purchase Price of the Series 2020 Bonds. The Original Proceeds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in *Article V* hereof. The Original Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Original Proceeds. The Trustee shall be entitled to rely upon a written waiver of receipt and payment of disbursements from the Project Fund as long as the Tenant and the Owner are the same entity.

Section 2.09. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2020 Bonds and any other Additional Bonds Outstanding at any time and from time to time, upon compliance with the conditions hereinafter provided in this Section, for any of the following purposes:

(i) To provide funds to pay the costs of completing the Improvements, the total of such costs to be evidenced by a certificate signed by the Authorized Tenant Representative.

(ii) To provide funds to pay all or any part of the costs of repairing, replacing or restoring Improvements in the event of damage, destruction or condemnation thereto or thereof.

(iii) To provide funds to pay all or any part of the costs of acquisition, purchase or construction of such additions, improvements, extensions, alterations, expansions or modifications of the Project (including additional Land or Improvements) or any part thereof as the Tenant may deem necessary or desirable and as will not impair the nature of the Project as a "facility" within the meaning and purposes of the Act.

(iv) To provide funds for refunding all or any part of the Bonds of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated Redemption Date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Original Purchaser shall be given written notice thereof by Issuer or Tenant and the Issuer's governing body shall enact an Ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Bonds are being issued or describing the Bonds to be refunded, (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of providing for the issuance of and securing such Additional Bonds and, if required, (iii) authorizing the Issuer to enter into a supplemental lease with the Tenant to provide for rental payments at least sufficient to pay the principal of, premium, if any, and interest on the Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, for the acquisition, purchase, construction or installation of additional Improvements, for the inclusion of any such addition, expansion or modification as a part of the Project, and for such other matters as are appropriate because of the issuance of the Additional Bonds proposed to be issued which, in the judgment of the Issuer, is not to the prejudice of the Issuer or the owners of the Bonds previously issued.

(c) Such Additional Bonds shall have the same designation as the Series 2020 Bonds, except for an identifying series letter or date and the addition of the word "Refunding" when applicable, shall be dated, shall be stated to mature on Principal Payment Dates in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of *Article III* of this Indenture), all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2020 Bonds and any other Additional Bonds Outstanding at the time of the issuance of such Additional Bonds.

(d) Such Additional Bonds shall be substantially in the form and executed in the manner set forth in this Article and *Article IV* hereof and certificates representing such Bonds shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Bond certificates by the Trustee, there shall be filed with the Trustee the following:

(i) An original or certified copy of the ordinance enacted by the Issuer's governing body authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture and the appropriate amendments or supplements to the Lease.

(ii) An executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.

(iii) An executed counterpart of the amendment or supplement to the Lease, if required.

(iv) An opinion of Bond Counsel to the effect that the Additional Bonds constitute valid and legally binding obligations of the Issuer and are exempt from Kansas income taxation, subject to such limitations and restrictions as shall be described therein.

(v) In the case of Additional Bonds being issued to refund Outstanding Bonds, such additional documents as shall be reasonably required by the Trustee to establish that provision has been duly made for the payment of all of the Bonds to be refunded in accordance with the provisions of *Article XII* of this Indenture.

(vi) A copy of the written notice to the Original Purchaser.

(vii) Such other instructions, certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of such Additional Bonds.

(e) When the documents mentioned in subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee as provided in *Article V* hereof and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds (excluding accrued interest and premium, if any, which shall be deposited in the Debt Service Fund) of all Additional Bonds issued to refund Outstanding Bonds shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the principal of, premium, if any, and interest on the Bonds to be refunded, as provided in *Section 12.02* hereof and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

(f) Except as provided in this Section, the Issuer will not otherwise issue any obligations ratably secured and on a parity with the Bonds, but the Issuer may issue other obligations specifically subordinate and junior to the Bonds with the express written consent of the Tenant.

Section 2.10. Temporary Bonds.

(a) Until definitive Bonds of any series are available for delivery, the Issuer may execute, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same limitations and conditions as definitive Bonds, temporary printed, engraved, lithographed or typewritten Bonds, in the form of fully registered Bonds in denominations of $5,000 or any integral multiple thereof, substantially of the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

(b) If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal office of any temporary Bond shall cancel the same and authenticate and deliver in exchange therefor, without charge to the Owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same series and maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder.

Section 2.11. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond certificate shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond certificate of like series, date and tenor as the Bond certificate mutilated, lost, stolen or destroyed. In the case of any mutilated Bond certificate, such mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond certificate, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond certificate the Issuer may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Bond certificate, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 2.12. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or the certificates of which have otherwise been surrendered to the Trustee under this Indenture, either at or before Maturity, shall be canceled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender of the certificates thereof to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee.

Section 2.13. Payments Due on Saturdays, Sundays and Holidays. In any case where the Maturity of any Bonds shall not be a Business Day, then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of Maturity, and no interest shall accrue for the period after such date.

Section 2.14. Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due, either at its Stated Maturity or Redemption Date, or the Trustee is unable to locate the Owner for the payment of accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Owner(s) of Bonds for the payment of such Bond and accrued interest shall cease and be completely discharged, and the Trustee shall hold such funds, without interest, for the benefit of such Owner(s) of Bonds, who shall thereafter be restricted exclusively to such funds for any claim on, or with respect to, such Bond and interest. If any Bond shall not be presented for payment within four years following the date when it becomes due, whether by Maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee shall repay to the Tenant the funds theretofore held by it for payment of such Bond and interest, and such Bond and interest shall thereafter be an unsecured obligation of the Tenant, subject to the defense of any applicable statute of limitation, and the Owner thereof shall be entitled to look only to the Tenant for payment, and then only to the extent of the amount so repaid, and the Tenant shall not be liable for any additional interest thereon.

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Redemption of Bonds Generally. The Series 2020 Bonds shall be subject to redemption prior to Stated Maturity in accordance with the terms and provisions of this Article. Additional

Bonds shall be subject to redemption prior to Stated Maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds.

Section 3.02. Redemption of Series 2020 Bonds. The Series 2020 Bonds shall be subject to redemption as follows:

Optional Redemption. Series 2020 Bonds maturing in 2020 and thereafter shall be subject to redemption and payment prior to Stated Maturity, at the option of the Issuer, upon instructions from the Tenant, on and after December 9, 2020, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium.

Section 3.03. Selection of Bonds to be Redeemed.

(a) Bonds shall be redeemed only in Authorized Denominations. If less than all of the Outstanding Bonds of any series are to be redeemed and paid prior to Stated Maturity, such Bonds shall be redeemed as directed in writing by the Tenant. Bonds of less than a full Stated Maturity are to be selected by the Trustee in such equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each minimum Authorized Denomination of face value shall be treated as though it was a separate Bond of the minimum Authorized Denomination. If it is determined that one or more, but not all, of the minimum Authorized Denomination units of face value represented by any fully registered Bond is selected for redemption, then the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (1) for payment of the redemption price (including the premium, if any, and interest to the Redemption Date) of the minimum Authorized Denomination unit or units of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the owner of any such Bond of a denomination greater than a minimum Authorized Denomination shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the principal amount thereof called for redemption (and to that extent only).

Section 3.04. Trustee's Duty to Redeem Bonds. The Trustee shall call bonds for mandatory redemption immediately upon receipt of written advice from the Issuer that the event giving rise to mandatory redemption has occurred, and stating the Redemption Date (except with respect to mandatory redemption of Term Bonds, no further notice of which is required). Upon receipt by the Trustee of such written advice, if required, and upon its own initiative if not required, the Trustee shall give at least 30 days' written notice of redemption to the Owner(s) of Bonds as provided herein. The Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided in *Section 3.05* hereof upon receipt by the Trustee at least 45 days prior to the proposed Redemption Date (unless waived) of a written request of the Issuer together with a copy of the redemption instructions of the Tenant. Such instructions shall specify the principal amount and the respective maturities of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption. In the event of a mandatory redemption as provided herein, no request from the Issuer or instructions from the Tenant shall be necessary. Such instructions may direct that the redemption be conditioned upon the availability of funds therefore from the proceeds of refunding bonds issued by the Issuer.

Section 3.05. Notice of Redemption. Notice of the call for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing by first class mail, postage prepaid, a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the Redemption Date, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds or portions of Bonds to be redeemed (and in the case of the redemption of a portion of any Bond the principal amount thereof being redeemed), the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the Redemption Date. Any notice of redemption may be conditioned upon the availability of funds therefore from the proceeds of refunding bonds to be issued by the Issuer, if so instructed by the Tenant. A copy of each such notice of redemption shall be provided to any authorized co-paying agent appointed by the Trustee.

Section 3.06. Effect of Call for Redemption. Prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, accrued interest thereon to the Redemption Date and the redemption premium, if any. Upon the deposit of such funds or Government Securities, and notice having been given as provided in *Section 3.05* hereof, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified Redemption Date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

ARTICLE IV

FORM OF BONDS

Section 4.01. Forms Generally. The Series 2020 Bonds, and the Trustee's certificate of authentication to be endorsed thereon shall be, respectively, in substantially the form set forth in *Appendix A*. Any Additional Bonds, and the Trustee's Certificate of Authentication to be endorsed thereon shall also be in substantially such form, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture or any Supplemental Indenture. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

Section 4.02. Bond Counsel's Approving Opinion. If printed on the Bond certificates, Bond Counsel's approving opinion with respect to the authorization and issuance of the Bonds shall be preceded by the following certificate:

I, the undersigned, City Clerk of the City of Abilene, Kansas hereby certify that the following is a true and correct copy of the complete final legal opinion of Gilmore & Bell, P.C., Bond Counsel, on the within Bond and the series of which said Bond is a part, except that it omits the date of such opinion, that said legal opinion was manually executed and was dated and issued as of the date of delivery of and payment for such Bonds, and is on file with BOKF, N.A., Kansas City, Missouri.

(facsimile signature)
City Clerk of the

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 5.01. Creation of Funds and Accounts. There are hereby established in the custody of the Trustee the following Funds and Accounts:

(a) "City of Abilene, Kansas Project Fund (NARAYAN, INC.)"

(b) "City of Abilene, Kansas Debt Service Fund (NARAYAN, INC.)"

The Trustee may create separate subaccounts in any Fund or Account for each series of Bonds issued pursuant to the Indenture.

Section 5.02. Deposit of Bond Proceeds. Except as otherwise provided in *Section 4.1* of the Lease, the net proceeds of the Bonds, as advanced, shall be deposited or deemed to be deposited (as set forth in *Section 4.1* of the Lease and *Section 208(f)* hereof) into the Project Fund.

ARTICLE VI

REVENUES AND FUNDS

Section 6.01. Deposits into the Project Fund. In addition to the amounts required to be paid into the Project Fund pursuant to *Section 5.02* hereof, the following funds shall be paid over to and deposited by the Trustee into the Project Fund, as and when received:

(a) The earnings accrued on the investment of moneys in the Project Fund and required to be deposited into the Project Fund pursuant to *Section 7.02* hereof.

(b) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, additional amounts from the proceeds of such Additional Bonds required to acquire, construct and install the Project Additions.

(c) The Net Proceeds of casualty insurance, condemnation awards or title insurance required to be deposited into the Project Fund pursuant to the Lease.

(d) Any and all payments from any contractors or other suppliers by way of breach of contract, refunds or adjustments required to be deposited into the Project Fund pursuant to the Lease.

(e) Except as otherwise provided herein or in the Lease, any other money received by or to be paid to the Trustee from any other source for the purchase or construction of the Improvements, when accompanied by directions by the Tenant that such moneys are to be deposited into the Project Fund

Section 6.02. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs (other than Costs of Issuance) in accordance with the provisions of *Article V* of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions. If the Issuer so requests, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer. If, pursuant to *Article IV* of the Lease and *Section 208(f)* hereof, the Trustee is deemed to have deposited the Original Proceeds into the Project Fund, the Trustee shall be deemed to have disbursed such funds from the Project Fund to the Tenant (or such other entity designated by the Tenant) in satisfaction of the requisition certificate.

(b) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Improvements have been completed the Trustee, if requested, shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Tenant.

(c) The completion of the Improvements and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee by the Tenant of the Certificate of Completion required by *Section 5.5* of the Lease. Any balance remaining in the Project Fund shall without further authorization be deposited in the Debt Service Fund and applied by the Trustee solely to the payment of principal of the Bonds through the payment on a Stated Maturity or redemption thereof on any Redemption Date specified in the optional redemption provisions of *Section 3.02* hereof, or as otherwise permissible in the opinion of Bond Counsel.

Section 6.03. Disposition Upon Acceleration. If the principal of the Bonds shall have become due and payable pursuant to *Section 9.01* of this Indenture, upon the date of payment by the Trustee of any moneys due as hereinafter provided in *Article IX*, any balance remaining in the Project Fund shall, without further authorization, be deposited in the Debt Service Fund by the Trustee.

Section 6.04. Deposits into the Debt Service Fund. In addition to the amounts required to be paid into the Debt Service Fund pursuant to *Section 5.02* hereof, the Trustee shall deposit into the Debt Service Fund, as and when received, the following:

(a) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, proceeds of such Additional Bonds in an amount not to exceed the sum which, when added to the accrued interest and premium, if any, received from the sale of such Additional Bonds, will be sufficient to pay the interest accruing on such Additional Bonds during the estimated period of construction of the Project Additions financed through the issuance of such Additional Bonds.

(b) All Basic Rent payable by the Tenant to the Issuer specified in *Section 3.1* of the Lease.

(c) Any amount in the Project Fund to be transferred to the Debt Service Fund pursuant to the provisions of this Indenture

(d) All interest and other income derived from investments of Debt Service Fund moneys as provided in *Section 7.02* hereof.

(g) All other moneys received by the Trustee under and pursuant to any of the provisions of the Lease, except Additional Rent, or when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Debt Service Fund.

Section 6.05. Application of Moneys in the Debt Service Fund.

(a) Except as provided in subsection (d) of this Section, moneys in the Debt Service Fund shall be expended solely for the payment of the principal of, premium, if any, and interest on the Outstanding Bonds as the same mature and become due or upon the redemption thereof prior to maturity.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Debt Service Fund to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal, premium, if any, and interest. To the extent the Tenant is the Owner of all of the Bonds Outstanding, payment may be made via transaction entry on the trust records held by Trustee.

(c) The Trustee, upon written direction of the Issuer and the Tenant, shall use any excess moneys in the Debt Service Fund (other than investment earnings credited to such account) and any moneys paid to the Trustee for deposit in the Debt Service Fund pursuant to the Lease to redeem Outstanding Bonds, interest accruing thereon prior to such redemption, and redemption premium, if any, in accordance with and to the extent permitted by *Article III* hereof so long as the Tenant is not in default with respect to payments of Basic Rent under the Lease and to the extent said moneys are in excess of amounts required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment. The Tenant may also direct such excess moneys in the Debt Service Fund or such part thereof or other moneys of the Tenant, as the Tenant may direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation.

(d) Any amount remaining in the Debt Service Fund after the principal of, premium, if any, and interest on the Bonds shall have been paid in full or provision made therefor in accordance with *Article XII* hereof, shall be paid to the Tenant by the Trustee.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 7.01. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for the account of any fund or account under any provision of this Indenture, and all moneys deposited with or paid to the Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 7.02. Investment of Moneys in Funds. Moneys held in each of the Funds and Accounts shall be separately invested and reinvested by the Trustee in accordance with the provisions hereof, at the written direction of the Authorized Tenant Representative (or in the absence of such written direction, as provided in *subsection (e)* of the definition of Investment Securities) in Investment Securities which mature or are subject to redemption by the owner prior to the date such funds will be needed. The Trustee may make any investments permitted by this Section through its own bond department or short-term investment department and may pool moneys for investment purposes, except moneys held in the yield restricted portion of any fund or account, which shall be invested separately. Any such Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held. The interest earned on and any profit realized from Investment Securities held in any Fund or Account under this Indenture shall be deposited into the Debt Service Fund. Any loss resulting from such Investment Securities shall be charged to such Fund or Account in which such Investment Securities generating the loss are held. The Bond Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in such Fund or Account is insufficient for the purposes of such Fund or Account

Section 7.03. Record Keeping. The Trustee shall maintain records demonstrating compliance with the provisions of this Article and with the provisions of *Article VI* for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 8.01. Payment of Principal of, Premium, if any, and Interest on the Bonds. The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project (as well as moneys held for such purposes hereunder) as described herein, promptly pay or cause to be paid the principal of, premium, if any, and interest on the Bonds as the same become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use its best efforts to cause the Project to be continuously leased as a revenue and income producing undertaking, and that, should there be a default under the Lease with the result that the right of possession of the Project is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Owner(s) of Bonds to protect the rights and security of the Owner(s) of Bonds and shall diligently proceed in good faith and use its best efforts to secure another tenant for the Project to the end that at all times sufficient rents, revenues and receipts will be derived by Issuer from the Project to provide for payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 8.02. Authority to Execute Indenture and Issue Bonds. The Issuer covenants, to the best of its knowledge and belief, that: (i) it is duly authorized under the constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth (including the creation of a security interest therein); (ii) all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and (iii) the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 8.03. Performance of Covenants. The Issuer covenants that it will endeavor to faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto.

Section 8.04. Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 8.05. Recording and Filing. The Issuer shall cause the Lease and all amendments to the Lease or appropriate memoranda thereof and all appropriate financing statements and other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owner(s) of Bonds and the rights of the Trustee hereunder. The Issuer hereby authorizes the Trustee to make any such filings for it. The Trustee shall cause all appropriate continuation statements of financing statements initially recorded to be recorded and filed in such manner and in such places as may be required by law to continue the effectiveness of such financing statements.

Section 8.06. Maintenance, Taxes and Insurance. The Issuer represents that pursuant to the provisions of *Articles VI, VII* and *X* of the Lease, the Tenant has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of Tenant.

Section 8.07. Inspection of Project Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall, at all reasonable times during regular business hours, be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 8.08. Enforcement of Rights Under the Lease. The Lease, a duly executed counterpart of which has been filed with the Trustee, sets forth the covenants and obligations of the Issuer and the Tenant, including provisions that subsequent to the issuance of the Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof, the Lease may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, and reference is hereby made to the Lease for a detailed statement of said covenants and obligations of the Tenant thereunder, and the Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Tenant under and pursuant to the Lease for and on behalf of the Owners, whether or not an Event of Default exists hereunder.

Section 8.09. Possession and Use of Project. So long as not otherwise provided in this Indenture, the Tenant shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

ARTICLE IX

REMEDIES ON DEFAULT

Section 9.01. Acceleration of Maturity in Event of Default.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of Owner(s) of Bonds owning not less than 25% in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Tenant, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest on the Bonds, together with all Default

Administration Costs, all overdue installments of Basic Rent and Additional Rent under the Lease and all other sums then payable by the Issuer under this Indenture shall either be paid or provision satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee may in its discretion, and shall upon the written consent of Owner(s) of Bonds owning at least 51% in aggregate principal amount of the Bonds Outstanding, rescind such declaration and annul such default in its entirety.

(c) In case of any rescission, then and in every such case the Issuer, the Trustee and the Owner(s) of Bonds shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 9.02. Exercise of Remedies by the Trustee.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and if requested to do so in writing by Owner(s) of Bonds owning not less than 25% of the aggregate principal amount of Bonds Outstanding, and if indemnified to its satisfaction and satisfactory provision has been offered as to payment of Default Administration Costs and third-party liability, 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 Trustee, being advised by counsel, shall deem most expedient in the interests of the Owner(s) of Bonds to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owner(s) of Bonds, and any recovery of judgment shall be for the equal benefit of all Outstanding Bonds.

(c) In any litigation with the Tenant, after an Event of Default, the Trustee may, after obtaining the written approval of Owner(s) of Bonds owning at least 51% of the aggregate principal amount of Bonds Outstanding, enter into an agreement to settle the litigation upon such terms as the Trustee in its sole discretion determines to be in the best interest of the Owner(s) of Bonds.

Section 9.03. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default shall have occurred and be continuing, the Issuer, upon demand of the Trustee, shall forthwith surrender the possession of, and the Trustee, by such officer or agent as it may appoint, may take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the Issuer pertaining thereto, and including the rights and the position of the Issuer under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements; and the Trustee may lease the Project or any part thereof, in the name and for account of the Issuer, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including (i) reasonable compensation to the Trustee, its agents and counsel, (ii) any charges of the Trustee hereunder, (iii) any taxes and assessments and other charges prior to the lien of this Indenture, (iv) any costs and expenses of the Issuer in connection with the Project and (v) all expenses of such repairs and improvements, and the Trustee shall apply the remainder of the moneys so received in accordance with *Section 9.10*. Whenever all that is due upon the Bonds shall have been paid and all defaults made good, the Trustee shall surrender possession of the Trust Estate to the Issuer, its successors and assigns, the same right of entry, however, to exist upon any subsequent Event of Default.

While in possession of such property, the Trustee shall render annually to the Issuer and the Tenant a summarized statement of receipts and expenditures in connection therewith.

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Section 9.04. [Reserved][Sale in Event of Default]. If an Event of Default shall have occurred and be continuing, the Trustee, as assignee of the Issuer, may (but shall not be required to) sell the Issuer's interest in the Project on behalf of the Issuer in accordance with the provisions of the Lease, and the Trustee or the Owner or Owners of any of the Bonds then Outstanding, whether or not then in default in the payment of principal or interest, may become the purchaser at any such sale to the highest bidder.

In the event of such a sale, the Issuer and the Trustee shall execute and deliver any necessary or appropriate instrument of conveyance of the Issuer's interest in the Project to the purchaser or purchasers thereof, and any statement or recital of fact in such deed in relation to the nonpayment of the Bonds, default, existence of the Bonds, notice of advertisement, sale, receipt of money, and the happening of any event whereby a prima facie evidence of the truth of such statement or recital. The Bond Trustee shall receive the proceeds of sale and pay the same in accordance with *Section 9.10(b).]*

Section 9.05. Appointment of Receivers. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 9.06. Limitation on Exercise of Remedies by Owner(s) of Bonds. No Owner(s) of Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) Owner(s) of Bonds owning at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iv) satisfactory indemnity and provision for payment of Default Administration Costs and third-party liability shall have been offered to the Trustee and (v) the Trustee shall thereafter fail or refuse to exercise the powers granted in this section to institute such action, suit or proceeding in its own name; and such knowledge and request are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owner(s) of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bonds then Outstanding.

Section 9.07. Right of Owner(s) of Bonds to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, and upon providing the Trustee indemnification satisfactory to it as provided above, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and Trustee shall have the right to decline to follow such direction if the Trustee shall in good faith, and upon the advice of counsel, determine that proceedings so directed would expose the Trustee to personal liability.

Section 9.08. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owner(s) of Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owner(s) of Bonds hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or by the Owner(s) of Bonds, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 9.09. Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on Bonds, and shall do so upon the written request of Owner(s) of Bonds owning at least 51% in aggregate principal amount of all the Bonds then Outstanding and satisfaction of the conditions set forth in *Section 9.01(b)*. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Owner(s) of Bonds shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 9.10. Application of Money Received after Event of Default.

(a) If the principal of all Bonds shall have become due and payable after the occurrence of an Event of Default, all moneys thereafter received from the Tenant, from reletting of the Project shall be deposited in the Debt Service Fund and all moneys in the Debt Service Fund shall be applied as follows:

first: To the payment of Default Administration Costs *second*: To the payment of the whole amount then due and unpaid upon the Outstanding Bonds for principal and premium, if any, and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Bonds) on overdue principal and premium, if any, and on overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Bonds, then to the payment of such principal, premium and interest, without any preference or priority, ratably according to the aggregate amount so due; and

third: To the payment of any other amounts required to be paid under this Indenture or the Lease; and

fourth: To the payment of the remainder, if any, to the Tenant or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(b) Whenever moneys are to be applied by the Issuer or the Trustee pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee in its sole discretion determines, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Trustee in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability to any Owner(s) of Bonds or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and moneys are applied in accordance with such provisions of this Indenture. Whenever the Trustee exercises such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to any Owner(s) of Bonds of any unpaid Bond until the Bond certificate(s) representing Bonds owned are surrendered to the Trustee as Bond Registrar for appropriate endorsement, or for cancellation if fully paid.

(c) Whenever the principal of and premium, if any, and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in the Debt Service Fund shall be paid to the Tenant as provided in *Section 6.07(d).*

ARTICLE X

THE TRUSTEE

Section 10.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts in the manner in which a corporate trustee ordinarily would perform said trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) Prior to the occurrence of an Event of Default and after the cure of all Events of Default which may have occurred, the Trustee's duties and responsibilities shall include only those expressly set forth in this Trust Indenture and those rights, duties, responsibilities, and obligations which are reserved to or imposed upon the Issuer under this Trust Indenture and the Lease, excepting only such of those rights, duties, responsibilities, and obligations as may only be properly and lawfully exercised by or imposed upon the Issuer.

(b) Upon the occurrence of an Event of Default the Trustee shall be and is hereby authorized to bring appropriate action for judgment or such other relief as may be appropriate and such action may be in the name of the Trustee or in the name of the Issuer and Trustee jointly; but in such case, neither the Issuer nor the Trustee shall have any obligation for any fees and expenses of such action except out of any funds available by reason of the ownership of the Project and moneys available under this Trust Indenture and the Lease. In addition, the Trustee may file such proof of claim and such other documents as may be necessary and advisable in order to have the claims of the Trustee and the Owner(s) of Bonds relative to the Bonds or the obligations relating thereto allowed in any judicial proceeding.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers. The Trustee shall be entitled to rely upon the opinion or advice of counsel, who may be counsel to the Trustee, Issuer or the Tenant, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof.

(d) The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any ordinance, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture or the Lease believed by it to be genuine and correct and to have been signed, presented or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is an Owner(s) of Bonds, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in substitution thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the mayor of the Issuer or the Authorized Tenant Representative as sufficient evidence of the facts therein contained, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee is under no duty to perform an independent investigation as to any statement or fact contained in any such certificate, opinion or advice it obtains regarding the accuracy or truth of any statement or correctness of any opinion. The Trustee shall not be liable for any action or inaction taken in good faith in reliance on such a certificate or any advice received from counsel, and the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions or statements expressed therein.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct. In no event shall the Trustee be liable for consequential damages. The Trustee shall not be liable for any act or omission, in the absence of bad faith, when the Trustee reasonably believes the act or failure to act is authorized and within its powers to perform under the Indenture.

(h) At any and all reasonable times and upon reasonable prior notification to the Tenant, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect any and all of the Project and all books, papers and records of the Issuer and Tenant pertaining to the Project and the Bonds, and to make such notes and copies as may be desired.

(i) The Trustee shall not be required to give any bond or surety with respect to the execution of its trusts and powers hereunder or otherwise with respect to the Project.

(j) The Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purpose of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(k) The Trustee shall not be required to take notice of, or be deemed to have notice of, any default hereunder or under the Lease, except the failure by the Issuer to cause to be made any of the payments required to be made under the Lease or in accordance with *Article VI* hereof, or the failure by the Issuer to cause compliance by the Tenant with the insurance provisions of *Article VI* of the Lease, unless the Trustee shall have been specifically notified in writing of such default by the Issuer or by Owner(s) of Bonds owning at least 25% in aggregate principal amount of all Bonds then Outstanding.

(l) The Trustee may inform the Owner(s) of Bonds of environmental hazards that the Trustee has reason to believe exist with respect to the Project, the Land or the Improvements, and the Trustee shall have the right to take no further action with respect thereto, and, in such event, no fiduciary duty shall exist which imposes any obligation for further action by the Trustee with respect to the Project, the Land, the Improvements, the enforcement of any remedies hereunder or under this Lease, the Trust Estate, or any portion thereof, if, in the reasonable opinion of the Trustee, such action would subject the Trustee to environmental or other liability for which the Trustee has not received indemnity satisfactory to it.

(m) Before taking any action under this Indenture, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(n) Notwithstanding any other provision of this Indenture to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(o) The Trustee may elect not to proceed in accordance with the directions of the Owners of the Bonds without incurring any liability to the Owners of the Bonds if, in the opinion of the Trustee, such direction may result in environmental or other liability to the Trustee, in its individual capacity, for which the Trustee has not received indemnity pursuant to this section from the Owners of the

Bonds, and the Trustee may rely conclusively upon an opinion of counsel in determining whether any action directed by the Owners of the Bonds may result in such liability.

Section 10.02. Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent. The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary costs, charges and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs, expenses and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Tenant for the payment of all fees, charges and expenses of the Trustee and any Paying Agents as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment of principal of, redemption premium, if any, or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred, for Default Administration Costs and for any unpaid Additional Rent owing under the Lease. The provisions of this Section shall survive the satisfaction and discharge of this Indenture, the payment in full of the Bonds, and the Trustee’s resignation or removal.

Section 10.03. Notice to Owner(s) of Bonds if Default Occurs. If an Event of Default occurs, of which the Trustee is aware and of which it is required to take notice, the Trustee shall give written notice thereof to the Owner(s) of Bonds, as shown by the bond registration books required to be maintained by the Trustee and kept at the principal office of the Trustee.

Section 10.04. Intervention by the Trustee. In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Owner(s) of Bonds, the Trustee may intervene on behalf of the Owner(s) of Bonds and shall do so if requested in writing by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and if provided with indemnity satisfactory to the Trustee.

Section 10.05. Successor Trustee Upon Merger, Consolidation or Sale. Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 10.06. Resignation of Trustee. The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Tenant to take effect not sooner than 90 days after its delivery, whereupon the Issuer, with the consent of the Tenant, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified. In the event the Issuer and the Tenant do not promptly designate a successor trustee, then the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor. The Trustee’s rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such resignation.

Section 10.07. Removal of Trustee. As long as no Default or Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Issuer or the Tenant; provided, that such removal shall not be effective unless and until a successor trustee is appointed and qualified, and provided further than such removal shall not become effective until after 60 days from the date written notice of such proposed removal is given to the Trustee by first class mail. The Issuer or the Tenant, concurrently with giving notice to the Trustee, shall give notice by first class mail of the proposed removal of the Trustee to all Owner(s) of Bonds. Unless Owner(s) of Bonds owning at least 51% in principal amount of Bonds then Outstanding object in writing to the proposed removal of the Trustee, such removal shall become effective from the date specified in the notices, provided that the successor trustee shall have been qualified and have accepted the duties and responsibilities of the Trustee as of such date. The Trustee may be removed at any time by the written direction of Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding. The Trustee's rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such removal.

Section 10.08. Qualifications of Successor Trustee. Every successor Trustee appointed pursuant to the provisions of this Article shall be a trust company or bank in good standing, qualified to accept such trust and acceptable to the Issuer and the Tenant.

Section 10.09. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Tenant an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 10.10. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, and the Tenant has failed after 30 days written notice to make such payment the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owner(s) of Bonds hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of, premium, if any, or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 10.11. Trust Estate May Be Vested in Co-trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either a default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, then any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 10.12. Annual Accounting. The Trustee shall render an annual accounting to the Tenant, to the Issuer upon request, and to any Owner(s) of Bonds requesting the same in writing and remitting reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 10.13. Performance of Duties under the Lease. The Trustee hereby accepts and agrees to perform, in such manner as is consistent with the terms of those instruments and this Indenture, all duties and obligations assigned to it under the Lease.

Section 10.14. Electronic Notice to Trustee. The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent in writing or by electronic notice, provided, however, that such instructions or directions shall be signed by an Authorized Tenant Representative. If the Tenant elects to give the instructions by electronic notice, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Pursuant to the Lease, the Tenant agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 11.01. Supplemental Indentures Not Requiring Consent of Owner(s) of Bonds. The Issuer and the Trustee may from time to time, without the consent of any of the Owner(s) of

Bonds, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Indenture or to make any other change not prejudicial to the Owner(s) of Bonds;

(b) To grant to or confer upon the Trustee for the benefit of the Owner(s) of Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owner(s) of Bonds or the Trustee or either of them;

(c) To more precisely identify the Project or to add additional property thereto;

(d) To subject to this Indenture additional revenues, properties or collateral;

(e) To issue Additional Bonds as provided in *Section 2.09* hereof.

Section 11.02. Supplemental Indentures Requiring Consent of Owner(s) of Bonds.

(a) Exclusive of Supplemental Indentures described in *Section 11.01* hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owner(s) of Bonds owning not less than 66-2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that except as provided in subparagraph (b) of this *Section 11.02*, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the accrual of, or dates of payment of, interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) Any provision of this Indenture or the Bonds may be amended with the written consent of the Owners owning 100% in aggregate principal amount then Outstanding.

Section 11.03. Tenant's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Tenant shall not become effective unless and until the Tenant shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of an amendment to the Lease executed by the Tenant in connection with the issuance of Additional Bonds under *Section 2.09* hereof shall be deemed to constitute consent of the Tenant to the execution of a Supplemental Indenture pursuant to *Section 2.09* hereof. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture (other than a Supplemental Indenture proposed to be executed and delivered pursuant to *Section 2.09* hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Tenant at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

ARTICLE XII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 12.01. Satisfaction and Discharge of the Indenture.

(a) When the principal of, premium, if any, and interest on all Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in *Section 12.02* hereof, and provision shall also have been made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds, then the duties of the Trustee under this Indenture shall cease. Thereupon the Trustee shall discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Debt Service Fund required to be paid to the Tenant under *Section 6.07(d)* hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of, and interest accrued on, the Bonds. Notwithstanding anything otherwise provided herein, the provisions of this Indenture relating to compensation and indemnification of the Trustee shall survive satisfaction and discharge of the Indenture.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of, premium, if any, and interest due and payable upon all of the Bonds then Outstanding and all amounts required to be paid to the United States have been paid or such payment provided for in accordance with *Section 12.02* hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall deem this Indenture discharged.

Section 12.02. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and the applicable premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment. Bonds shall also be deemed paid if the Bond certificate(s) are surrendered to the Trustee as paying agent, accompanied by a written communication from the registered Owner waiving payment and directing that they be cancelled without actual payment. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities. As a condition to the Bonds being deemed paid, the Trustee shall have received an opinion of Bond Counsel to the effect that the conditions of this Section have been satisfied.

(b) Notwithstanding the foregoing, in the case of the redemption of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until proper notice of such redemption shall have been given in accordance with *Article III* of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds (including premium thereon, if any) and interest thereon shall be applied to and used solely for the payment of the particular Bonds (including premium thereon, if any) and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.01. Consents and Other Instruments by Owner(s) of Bonds.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owner(s) of Bonds may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owner(s) of Bonds in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, number and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee.

(b) In determining whether the Owner(s) of Bonds owning the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Tenant or any affiliate of the Tenant shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Tenant; and for the purposes of this definition, "control" means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Tenant or any affiliate of the Tenant.

Section 13.02. Limitation of Rights Under the Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto, and the Owner(s) of Bonds, any right, remedy or claim under or with respect to this Indenture, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Tenant and the Owner(s) of Bonds as herein provided.

Section 13.03. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, to the Notice Representative.

All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee. The Issuer, the Trustee and the Tenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 13.04. 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 Trustee shall constitute a sufficient notice.

Section 13.05. Severability. If any provision of this Indenture 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 13.06. Execution in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.07. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 13.08. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied.

CITY OF ABILENE, KANSAS

[SEAL]

By: _________________________________
Mayor

ATTEST:

____
City Clerk

"ISSUER"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DICKINSON)

This instrument was acknowledged before me on the ______ day of____________, 2020 by Chris Ostermann as Mayor of the City of Abilene, Kansas, a municipal corporation of the State of Kansas.

[SEAL]

____
Notary Public

My Appointment Expires:

____

602204.20020\INDENTURE

(Issuer Signature Page to Trust Indenture)

IN WITNESS WHEREOF, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf and such signature to be attested by its duly authorized officers, and its corporate seal to be applied, all as of the date first above written.

BOKF, N.A.
Kansas City, Missouri,
as Trustee

By: ________________________________
Name:
Title:

"TRUSTEE"

ACKNOWLEDGMENT

STATE OF ___________)
) SS.
COUNTY OF ___________)

This instrument was acknowledged before me on the ____ day of _____________ 2020, by ____________________, Vice President and Trust Officer of BOKF, N.A., a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL] ____
Notary Public

My Appointment Expires:

____

602204.20020\INDENTURE

(Trustee Signature Page to Trust Indenture)

APPENDIX A

FORM OF BONDS

FACE OF THE BOND

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

THIS SERIES 2020 BOND IS NOT AN OBLIGATION ON WHICH THE INTEREST IS EXCLUDABLE FROM GROSS INCOME UNDER SECTION 103 OF THE INTERNAL REVENUE CODE OF THE UNITED STATES OF AMERICA, AS AMENDED. THE OWNER OF THIS SERIES 2020 BOND SHOULD NOT REGARD THE INTEREST HEREON AS BEING EXEMPT FROM FEDERAL INCOME TAXATION.

No. _________ $_______

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF DICKINSON
CITY OF ABILENE, KANSAS
TAXABLE INDUSTRIAL REVENUE BOND
SERIES 2020
(NARAYAN, INC.)

Interest Rate:	Maturity Date:	Dated Date:	CUSIP:

Registered Owner: ____

Registered Amount: ____ DOLLARS
(or such lesser principal sum as is actually advanced hereunder pursuant to the Lease to pay Project Costs.)

The City of Abilene, Kansas, a body politic and corporate, incorporated as a city of second class of the State of Kansas (the "Issuer"), for value received, promises to pay, but solely from the sources hereinafter referred to, to the Registered Owner identified above, or registered assigns, the principal sum identified above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable on December 31, 2031 (the "Interest Payment Date"), until the Principal Amount has been paid.

The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the principal corporate trust office or other designated office of BOKF, N.A. in Kansas City, Missouri (the "Paying Agent" and "Trustee"). The interest payable on this Bond on any Interest Payment Date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Trustee at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to any Owner of $500,000 or more in aggregate principal amount of Bonds by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Indenture.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Indenture.

This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated " City of Abilene, Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.)," in the aggregate original principal amount not exceeding $8,000,000 (the "Series 2020 Bonds"), issued for the purpose of providing funds to pay the costs of the acquisition, construction, furnishing and equipping of a certain hotel facility (the "Project"), to be leased by the Issuer to NARAYAN, INC., a Kansas corporation (the "Tenant"), under the terms of a Lease dated as of December 1, 2020, between the Issuer and the Tenant (said Lease, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 *et seq*. and pursuant to proceedings duly had by the governing body of the Issuer.

The Series 2020 Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of December 1, 2020 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the Issuer and the Trustee. Subject to the terms and conditions set forth therein, the Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture ratably and on a parity with the Series 2020 Bonds (the Series 2020 Bonds together with such Additional Bonds being herein referred to collectively as the "Bonds"). Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Owner(s) of Bonds, and the terms upon which the Bonds are issued and secured.

The Series 2020 Bonds are subject to redemption prior to maturity, as follows:

*Optional Redemption***.** Series 2020 Bonds shall be subject to redemption and payment prior to Stated Maturity, at the option of the Issuer, upon instructions from the Tenant, on and after December 9, 2020, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium.

When any Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. If less than all of the Outstanding Bonds of this series are called for redemption, Bonds shall be redeemed as directed in writing by the Tenant. Bonds of less than a full maturity shall be selected by the Trustee in such equitable manner as it may determine. All Bonds so called for redemption will cease to bear interest on the specified Redemption Date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Project (including any Project Additions) as described in the Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Tenant has leased the Project to DHRUV, LLC, a Kansas limited liability company (the "Subtenant") under a lease between Tenant and Subtenant (the "Sublease").The Bonds and the interest thereon do not constitute a debt or general obligation of the Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds do not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Lease, Basic Rent is to be paid by the Tenant directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated " City of Abilene, Kansas Debt Service Fund (NARAYAN, INC**.)."**

No Owner of Bonds shall have the right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond certificate is transferable, as provided in the Indenture, only upon the registration books of the Issuer kept for that purpose at the above mentioned office of the Bond Registrar and Paying Agent by the Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or such Owner's duly authorized attorney, and thereupon a new Bond certificate in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Tenant has agreed to pay as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of certificates mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, Issuer has caused this Bond certificate to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused the Bonds to be dated as of December 9, 2020.

CITY OF ABILENE, KANSAS

(Facsimile Seal)

By: ________________________________
Mayor

ATTEST:

____
City Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond certificate evidences ownership of the City of Abilene, Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.), as described herein and in the within-mentioned Trust Indenture. The date of authentication of this Bond is ___________________.

BOKF, N.A.
Kansas City, Missouri,
Trustee

By: _________________________________
Authorized Signature

(FORM OF ASSIGNMENT)

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

____

Print or Type Name and Address of Transferee

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

Dated: __________________

____

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

Signature Guaranteed By:

[Seal of Bank]

____

(Name of Eligible Guarantor Institution)

By: _________________________________
Title:________________________

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

THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, OR IN A TRANSACTION EXEMPT FROM THE APPLICATION OF FEDERAL AND STATE SECURITIES LAWS.

CITY OF ABILENE, KANSAS

AS ISSUER

AND

NARAYAN, INC.

AS TENANT

LEASE

DATED AS OF DECEMBER 1, 2020

$8,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

602204.20020\LEASE

LEASE

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LEASE

THIS LEASE, made and entered into as of December 1, 2020 between the City of Abilene, Kansas (the "Issuer"), and NARAYAN, INC., a Kansas corporation (the "Tenant").

WITNESSETH:

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

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

(a) Acquire a leasehold interest in the Land pursuant to the Site Lease and acquire the Improvements;

(b) Lease its interest in the Project to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and

(c) Issue, for the purpose of paying Project Costs, the Series 2020 Bonds under and pursuant to and subject to the provisions of the Act and the Indenture, said Indenture being incorporated herein by reference and authorized by an Ordinance of the governing body of the Issuer; and

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

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

ARTICLE I

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

"Additional Rent" means all fees, charges, costs and expenses of the Trustee or the Issuer (including reasonable attorney's fees), all Impositions, all Default Administration Costs, all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorney's fees) incurred by the Issuer or the Trustee in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds and the administration or enforcement of any rights or obligations under this Lease or the Indenture except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The fees, charges, costs and expenses of the Issuer shall include, but not be limited to, any and all costs incurred by the Issuer in connection with the administration or enforcement of any rights, duties, or obligations under this Lease, the exercise or pursuit of any remedy upon an Event of Default, the amendment of this Lease, the granting of consents, easements or similar actions or any other action required of or available to the Issuer under the terms of this Lease.

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

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

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

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

"Basic Rent Payment Date" means December 31, 2031.

"Basic Term" means that term commencing as of the delivery of this Lease and ending on December 31, 2031, subject to prior termination as specified in this Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

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

"Certificate of Completion" means a written certificate signed by the Authorized Tenant Representative stating that (1) the Improvements have been substantially completed in accordance with the plans and specifications prepared or approved by the Issuer or the Tenant, as the case may be; (2) the Improvements have been substantially completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the Project are located or installed upon the Land; and (5) if required by ordinances duly adopted by the Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Improvements. A form of Certificate of Completion is attached as *Appendix B.*

"Completion Date" means the date on which the Improvements are certified as substantially completed in accordance with *Section 5.5* of this Lease.

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

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

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

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

"Event of Default" means any one of the following events:

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

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

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant.

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

"Hazardous Substances" shall mean "hazardous substances" as defined in CERCLA.

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

"Indenture" means the Trust Indenture delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of *Article XI* of the Indenture.

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

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

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

The term **"Notice Address"** shall mean:

(1) With respect to the Tenant:

NARAYAN, INC.
2369 Georgetown Road
Salina, Kansas 67401
Attn: President

(2) With respect to the Issuer:

City of Abilene, Kansas
419 N. Broadway Ave.
P.O. Box 519
Abilene, Kansas 67410
Attn: City Clerk

(3) With respect to the Trustee:

BOKF, N.A.
2405 Grand Boulevard, Suite 840
Kansas City, Missouri 64108
Attn: Corporate Trust Department

"Permitted Encumbrances" means easements and rights-of-way of record on the Issue Date, and any mortgages, liens or other encumbrances or title exceptions of record, including, but not limited to, the Lender's Mortgage.

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

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

"State" means the State of Kansas.

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

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

(a) The Tenant is a Kansas corporation, duly organized and existing under the laws of said state, and is duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its duly authorized officers.

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

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

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

(e) The Tenant agrees to operate and will operate the Project, or cause the Project to be operated as a "facility," as that term is contemplated in the Act, from the Closing Date on the Bonds to the end of the Term.

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

(g) The estimated total cost of the Improvements to be financed by the proceeds of the Series 2020 Bonds, plus interest on the Series 2020 Bonds during acquisition, construction and installation of the Improvements, and Costs of Issuance of the Series 2020 Bonds, will not be less than the original aggregate principal amount of the Series 2020 Bonds.

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

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

(j) The proceeds of the Series 2020 Bonds are to be used to acquire, construct, install, equip and furnish the Project.

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

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

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against, the Project, except for this Lease, the assignment of this Lease to the Trustee, any Permitted Encumbrances, any Impositions, and the pledge of the Project pursuant to the Indenture.

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

(d) It has pledged the Project and the net rentals therefrom generated under the Lease to payment of the Bonds in the manner prescribed by the Act, and has duly authorized the execution and delivery of this Lease and the Indenture and the issuance, sale and delivery of the Series 2020 Bonds.

(e) It has notified or obtained the consent to and/or approval of the issuance of the Series 2020 Bonds by each municipal corporation and political subdivision the notification, consent or approval of which is required by the provisions of the Act.

ARTICLE II

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

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Section 2.2. Subordination to Lender.
The Issuer acknowledges that the Mortgage does or will encumber the Project, and the Issuer consents to the Mortgage. The Issuer acknowledges and agrees that the Site Lease and this Lease are subordinate to such mortgage and that the aforementioned mortgage shall not be required to grant any rights of nondisturbance with respect to the Site Lease and this Lease. The Site Lease and this Lease shall also be automatically subordinated to any future mortgage and such future mortgagee shall not be required to grant any rights of nondisturbance with respect to the Site Lease and this Lease. Upon the request of the Tenant, the Issuer shall provide any additional documentation evidencing the subordination required by this *Section 2.2*.

ARTICLE III

Section 3.1. Basic Rent.
The Issuer reserves and the Tenant covenants and agrees to pay Basic Rent to the Trustee, as assignee of the Issuer, for the account of the Issuer, for deposit in the Debt Service Fund, on each Basic Rent Payment Date. Basic Rent shall be payable at the principal office of the Trustee on each Basic Rent Payment Date. Notwithstanding the foregoing, if the Tenant is the sole Owner of the Bonds, payments of Basic Rent made by the Tenant under the Lease which coincide with payments of principal and interest on the Bonds may be entered on the books of the Tenant as Owner of the Bonds without being deposited in the Debt Service Fund and the Trustee shall not be required to take notice, or be deemed to have notice, of any default in such payments. Such payments shall be credited against the Tenant's obligation to make payments of Basic Rent under the Lease and against the Issuer's obligation to make payments of principal and interest on the Bonds.

Notwithstanding the foregoing, if the Tenant is the sole Owner of the Bonds, payments of Basic Rent made by the Tenant under the Lease which coincide with payments of principal and interest on the Bonds may be entered on the books of the Tenant as Owner of the Bonds without being deposited in the Debt Service Fund and the Trustee shall not be required to take notice, or be deemed to have notice, of any default in such payments. Such payments shall be credited against the Tenant's obligation to make payments of Basic Rent under the Lease and against the Issuer's obligation to make payments of principal and interest on the Bonds. If the Bonds are at any time held by more than one Owner, then payments of Basic Rent shall be received and disbursed in accordance with the provisions of this Section.

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

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

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

Section 3.4. Prepayment of Basic Rent.
The Tenant may at any time prepay all or any part of the Basic Rent. Prepayments of Basic Rent will be applied to redemption of Bonds (other than mandatory sinking fund redemption), including payment of redemption premium, as directed in writing by the Tenant, to the extent that Bonds are subject to optional redemption at the time of prepayment. Otherwise, prepayments of Basic Rent will be deposited in the Debt Service Fund to be applied to purchase of Bonds as provided in the Indenture, or to optional redemption of Bonds (including redemption premium and interest) at the earliest date on which Bonds are subject to optional redemption.

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

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

ARTICLE IV

Section 4.1. Disposition of Original Proceeds; Project Fund.
The Original Proceeds shall be paid over to the Trustee or shall be deemed to be paid over to the Trustee for the account of the Issuer as the Bonds are issued and applied as set forth in *Section 5.02* of the Indenture. Notwithstanding any statement set forth in this Lease or in the Indenture to the contrary, in the event Tenant has completed the Project prior to Closing with its own funds, then Tenant shall not be required to deposit the Original Proceeds with the Trustee. In such an event, at Closing Tenant shall certify to the Issuer and Trustee that the Project has been completed and paid in full, whereupon the Issuer and Trustee shall deliver the Bonds to the Tenant.

ARTICLE V

Section 5.1. Acquisition of Land and Improvements.
The Tenant shall prior to or concurrently with the issuance of the Bonds, execute and deliver the Site Lease under which the Tenant will lease the Land as described in *Schedule I*. The Tenant shall also concurrently with execution of with such Site Lease make provisions for the discharge or subordination to the interests acquired by the Issuer of any liens or encumbrances incurred by it in connection with the construction, installation or development of the Improvements, other than Permitted Encumbrances.

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

Section 5.3. Payment of Project Costs for Buildings and Improvements.
The Issuer hereby agrees to pay or reimburse the Tenant for the acquisition or construction of the Improvements or any repairs or replacements to be made pursuant to *Article XVIII* of this Lease, but solely from Original Proceeds of the Bonds (or Net Proceeds, as applicable) as deposited in the Project Fund, and hereby authorizes and directs the Trustee to pay for the same, but solely from the Project Fund, from time to time, after issuance of the Bonds while the Tenant is in compliance with the requirements of *Section 6.1* hereof, upon receipt by the Trustee of a requisition certificate signed by the Authorized Tenant Representative in the form set forth as *Appendix A* hereto which is incorporated herein by reference. With regard to materials and/or labor furnished to the Project at the order of the Tenant without formal contract, or by subcontract with the Tenant acting as general contractor, which could form the basis of a statutory mechanic's or subcontractor's lien, the Tenant may request payment therefor only upon receipt of releases or waivers of statutory mechanic's or subcontractor's liens by all vendors or subcontractors receiving payment or furnishing labor or materials as a subcontractor of the vendor or subcontractor receiving payment. If, pursuant to *Article IV* of the Lease and **Section 208(f)** of the Indenture, the Trustee is deemed to have deposited the Original Proceeds into the Project Fund, the Trustee shall be deemed to have disbursed such funds from the Project Fund to the Tenant (or such other entity designated by the Tenant) in satisfaction of the requisition certificate.

The sole obligation of the Issuer under this paragraph shall be to cause the Trustee to make such disbursements upon receipt of such certificates and releases or waivers. As long as the Tenant is the sole Owner of the Bonds, the Trustee may rely fully on any such certificates and shall not be required to make any investigation in connection therewith.

Section 5.4. Payment of Project Costs for Machinery and Equipment.

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

(a) Name of seller;

(b) Name of the manufacturer;

(c) A copy of the seller's invoice, purchase order or other like document evidencing the purchase by the Tenant of such machinery and/or equipment;

(d) Common descriptive name of machinery or equipment;

(e) Manufacturer's or seller's technical description of machinery or equipment;

(f) Capacity or similar designation;

(g) Serial number, if any;

(h) Model number, if any; and

(i) A written statement by the Seller that the machinery or equipment purchased is not subject to any liens or security interest, or, in the alternative, a bill of sale warranting title to be free of all liens, encumbrances or security interests.

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

Section 5.5. Completion of Project.

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

Section 5.6. Deficiency of Project Fund.

If Bond Proceeds in the Project Fund are insufficient to pay fully all Project Costs (including reimbursements to the Tenant for Project Costs advanced by the Tenant prior to issuance of the Bonds) and to fully complete the Improvements, lien free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as the same become due, and the Tenant shall save the Issuer and the Trustee whole and harmless from any obligation to pay such deficiency.

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

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

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

Section 5.10. Kansas Retailers' Sales Tax.
The parties have entered into this Lease in contemplation that, under the existing provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Improvements are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that the Issuer shall, upon the request of and with the Tenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers a project exemption certificate for the construction of the Improvements. The Tenant covenants that said exemption certificate shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Project. The Issuer shall not be responsible for any failure on the part of the State to issue such project exemption certificate.

ARTICLE VI

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

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

(b) Statutory workers' compensation insurance in the amount required by State law;

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

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

Section 6.3. General Insurance Provisions.

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

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

(c) Certificates of insurance evidencing the insurance coverages herein required shall be filed with the Trustee continuously during the term of this Lease. The Trustee may conclusively rely on such certificates without investigation or inquiry and the delivery of such certificates shall evidence their compliance with the terms hereof.

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

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

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

Section 6.4. Evidence of Title.

The Tenant shall furnish evidence of title in the form of an ownership and encumbrance report showing Tenant's fee simple title to the Land, as of the date and time immediately prior to lease to the Issuer, subject to Permitted Encumbrances

ARTICLE VII

Section 7.1. Impositions.
The Tenant shall, during the Term of this Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments thereof as become due and payable during the term of this Lease as and when the same become due and payable.

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

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

Section 7.4. Ad Valorem Taxes.
The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds (except such property used for certain retail uses) is eligible to receive exemption from *ad valorem* taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has complied with certain notice, hearing and procedural requirements established by law, and proper application has been made; and further provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Issuer represents that such notice, hearing and procedural requirements will have been complied with at the Issue Date. The Issuer will, at the Tenant's request, with information furnished by Tenant and the Trustee, make all necessary filings regarding the application for *ad valorem* tax exemption for the full 10-year period in the calendar year following the calendar

year in which the Bonds were issued, and will renew said application from time to time and take any other action as may be necessary to maintain such *ad valorem* tax exemption in full force and effect, in accordance with K.S.A. 79-201a, 79-210 *et seq.* and the requirements of the State Board of Tax Appeals. If it becomes necessary to litigate the issue of availability or applicability of the *ad valorem* tax exemption, the Issuer will cooperate fully with Tenant in pursuing such litigation, but all litigation costs and reasonable attorney fees must be paid by Tenant, either directly or as Additional Rent.

ARTICLE VIII

Section 8.1. Use of Project.
Subject to the provisions of this Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease. The Tenant shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant to comply with the provisions of this Article.

Section 8.2. Environmental Provisions.

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

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

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

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

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

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

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

ARTICLE IX

Section 9.1. Sublease by the Tenant.

The Tenant may sublease the Project to a single party or entity, with the prior written consent of the Issuer. The Tenant may sublease portions of the Project for use by others in the normal course of its business without the Issuer's prior consent or approval. In the event of any such subleasing, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between the Issuer or the Trustee and any such subtenant shall relieve the Tenant of any of its duties and obligations hereunder. Any such sublease shall be subject and subordinate in all respects to the provisions of this Lease; provided that, nothing in this Lease shall allow the Issuer, its successor or assigns, to disturb the rights of a sublessee to use the Land and Improvements under the terms and conditions as set forth in such sublessee's sublease with the Tenant. The Sublease with the Subtenant is hereby approved.

Section 9.2. Assignment by the Tenant.
Except as otherwise provided in this Section or Section 9.1, the Tenant may assign, mortgage, sell, or otherwise transfer its interest in this Lease only with the prior written consent of the Issuer; provided that no such consent shall be required for Tenant to collaterally assign the Site Lease and this Lease to a lender with a mortgage against the Project. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no dealings or transactions between the Issuer or the Trustee and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section. The Issuer and the Tenant acknowledge that the Project is or will be encumbered by and subject to the terms of the Mortgage. No additional consent by the Issuer shall be required for the mortgage of the Company's interest in this Lease (or its fee interest in the Project) as provided in the Mortgage.

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

Section 9.4. Mergers and Consolidations.
Notwithstanding the provisions of *Sections 9.2* and *9.3* above, if the Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (a) the Issuer shall file with the Trustee its prior written consent to such assignment, transfer or merger, and (b) the proposed assignee, transferee or surviving entity shall expressly assume and agree to perform all of the obligations of the Tenant under the Site Lease, this Lease and with regard to the Bonds, then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment, transfer or merger.

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

ARTICLE X

Section 10.1. Repairs and Maintenance.

The Tenant covenants and agrees that it will, during the Term of this Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair (ordinary wear and tear excepted), including but not limited to the furnishing of all parts, mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order (ordinary wear and tear excepted).

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

All machinery or equipment constituting a part of the Project and removed by the Tenant in compliance with this Section shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant without otherwise accounting to the Issuer. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage caused thereby. The Tenant's rights under this Section to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and equipment no longer suitable to the Tenant's use for any of the reasons set forth in this Section and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

ARTICLE XI

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

ARTICLE XII

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

ARTICLE XIII

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

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

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

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

ARTICLE XIV

Section 14.1. Indemnity.
The Tenant agrees, whether or not the transactions contemplated by this Lease, the Bonds or the Indenture are consummated, to indemnify and hold harmless the Issuer and its officers, directors, officials, employees and

agents, including the Trustee as assignee of the Issuer's rights under this Lease, the Trustee as trustee under the Indenture, and the Original Purchaser and each of its officers, directors, employees and agents (any or all of the foregoing referred to hereafter as "Indemnified Persons"), from and against all claims, actions, suits, proceedings, expenses, judgments, damages, penalties, fines, assessments, liabilities, charges or other costs (including, without limitation, all attorneys' fees and expenses incurred in connection with enforcing this Lease or collecting any sums due hereunder and any claim or proceeding or any investigations undertaken hereunder) relating to, resulting from, or in connection with (a) any cause in connection with the Project, including, without limitation, the acquisition, design, construction, installation, equipping, operating, maintenance or use thereof; (b) any act or omission of the Tenant or any of its agents contractors, servants, employees or licensee in connection with the use or operation of the Project; (c) any cause in connection with the issuance and sale of the Bonds, (d) a misrepresentation or breach of warranty by the Tenant hereunder or under any of the documents executed by the Tenant in connection with this Lease, or (e) any violation by the Tenant of any of its covenants hereunder or under any of the other documents executed by the Tenant in connection with the Bonds or this Lease. This indemnity is effective only with respect to any loss incurred by any Indemnified Person not due to willful misconduct, gross negligence, or bad faith on part of such Indemnified Person. In case any action or proceeding shall be brought against one or more Indemnified Person and with respect to which such Indemnified Person may seek indemnity as provided herein, such Indemnified Person shall promptly notify the Tenant in writing and the Tenant shall promptly assume the defense thereof, including the employment of counsel reasonable satisfactory to such Indemnified Person or Indemnified Persons, the payment of all expenses and the right to negotiate and consent to settlement; but the failure to notify the Tenant as provided shall not relieve Tenant from any liability or duty under this Section, so long as Tenant is given reasonable opportunity to defend such claim.

ARTICLE XV

Section 15.1. Access to Project.

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

ARTICLE XVI

Section 16.1. Option to Extend Basic Term.

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

ARTICLE XVII

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

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

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

(2) $100.00.

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

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

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

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

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

Section 17.7. Quality of Title - Purchase Price.
If said notice of election to purchase is given as provided in *Section 17.6* the Issuer shall convey or release its interest in the real property described in the Tenant's notice to the Tenant on the specified date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which the title was subject on the Issue Date, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the real property described in the Tenant's notice. The purchase price shall be $100 payable to the Issuer.

Section 17.8. Closing of Purchase.
If the Issuer has an interest in such vacant real property free and clear of all liens and encumbrances except as stated above or has such other interest in such real property as may be acceptable to the Tenant, then on the specified date, the Issuer shall deliver its properly executed release to the Tenant free and clear of all liens and encumbrances except as stated above. Nothing herein shall require the Issuer to deliver its release to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied.

Section 17.9. Effect of Purchase on Lease.
The exercise by the Tenant of the option granted under these *Sections 17.6* to *17.10* and the purchase and sale and conveyance of a portion or portions of the Land constituting a part of the Project pursuant hereto shall in no way whatsoever affect this Lease, and all the terms and provisions hereof shall remain in full force and effect the same as though no notice of election to purchase had been given, and specifically, but not in limitation of the generality of the foregoing, exercise of such option shall not affect, alter, diminish, reduce or abate the Tenant's obligations to pay all Basic Rent and Additional Rent required hereunder.

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

ARTICLE XVIII

Section 18.1. Damage and Destruction.

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

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

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

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

Section 18.2. Condemnation.

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

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

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

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

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

Section 18.3. Effect of Tenant's Defaults.
Anything in this Article to the contrary notwithstanding, the Issuer and the Trustee shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event of Default has occurred and is continuing, or the Issuer or the Trustee has given notice to the Tenant of any

Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein, the Trustee shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Lease is terminated or the Issuer or the Trustee otherwise re-enters and takes possession of the Project without terminating this Lease, the Trustee shall pay all the Net Proceeds held by it into the Debt Service Fund and all rights of the Tenant in and to such Net Proceeds shall cease.

ARTICLE XIX

Section 19.1. Change of Circumstances.
If at any time during the Basic Term, a Change of Circumstances occurs, then the Tenant shall have the option to purchase the Project pursuant to *Article XVII* or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after the Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for pursuant to the Indenture.

ARTICLE XX

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XXI

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

ARTICLE XXII

Section 22.1. Surrender of Possession. Upon accrual of the Issuer's right of reentry as the result of the Tenant's Default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender possession of the Project to the Trustee, as assignee of the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 30 business days after the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Tenant owns under the provisions of this Lease and are not a part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 30 business days after such termination of this Lease shall become the separate and absolute property of the Issuer.

ARTICLE XXIII

Section 23.1. Notices; Electronic Instruction. All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by registered mail to the Notice Address. All notices given by registered mail as aforesaid shall be deemed duly given as of the date three days after they are so mailed. When mailed notices are given, the party giving notice will use reasonable diligence to contact the party being notified by telephone, electronic mail or facsimile on or before the date such notice is mailed. If the Tenant elects to give instructions by electronic notice to the Trustee, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Tenant agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

ARTICLE XXIV

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

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

ARTICLE XXV

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

Section 25.2. Waiver of Breach.
No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such Default or Defaults which were in existence at the time such payment or payments or performance were accepted by it.

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

ARTICLE XXVI

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

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

Section 26.3. Issuer's Obligations Limited.
Except as otherwise expressly provided in this Lease, no recourse upon any obligation or agreement contained in this Lease or in any Bond or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise under any circumstances, under or independent of the Indenture, shall be had against the Issuer and its officers, employees and agents.

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

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

ARTICLE XXVII

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

ARTICLE XXVIII

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

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

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

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

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

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

Section 28.3. Security Interests.
(a) The Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security interest of

the Issuer in and to the Project. The Tenant hereby authorizes the Issuer to file or cause to be filed all such instruments required to be so filed and the Trustee to continue or cause to be continued the filings or liens of such instruments for so long as the Bonds shall be Outstanding.

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

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

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

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

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

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

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF ABILENE, KANSAS

By: ________________________________
Mayor

[SEAL]

ATTEST:

By: ________________________________
City Clerk

"ISSUER"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DICKINSON)

This instrument was acknowledged before me on the ____day of ______________, 2020, by Chris Ostermann, Mayor, and Penny Soukup, City Clerk, of the City of Abilene, Kansas, a municipal corporation.

[SEAL]

____
Notary Public

My Appointment Expires:

____

602204.20020\LEASE

(Issuer Signature Page to Lease)

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

NARAYAN, INC.

By: ____
Name:
Title:

"TENANT"

ACKNOWLEDGMENT

STATE OF [____________])
) SS:
COUNTY OF [_______________])

This instrument was acknowledged before me on the ____ day of ______________, 2020, by _________________, President of NARAYAN, INC., a Kansas corporation.

[SEAL]

____
Notary Public

My Appointment Expires:

____

602204.20020\LEASE

(Tenant Signature Page to Lease)

APPENDIX A

FORM OF REQUISITION FOR PAYMENT OF PROJECT COSTS

CITY OF ABILENE, KANSAS
Project Fund
(NARAYAN, INC.)
Payment Order No. ______

BOKF, N.A
Kansas City, Missouri
Attn: Corporate Trust Department

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

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

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

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of December 1, 2020 by and between the City of Abilene, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

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

I acknowledge that the Tenant, as Purchaser of the Series 2020 Bond, will be receiving such Series 2020 Bond in compensation for the expenditures set forth in the Payment Schedules to acquire, construct and equip the Project and that the Series 2020 Bond will constitute full payment for these costs.

DATED ____________________, 20___.

____
Authorized Tenant Representative

EXHIBIT A - Payment Order No. _______

PAYMENT SCHEDULE
FOR BUILDINGS, IMPROVEMENTS AND
MISCELLANEOUS PROJECT COSTS

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

PAYMENT SCHEDULE

Payee Name	Payee Address	Purpose or Nature of Payment	Amount

______
Initials

602204.20020\LEASE

EXHIBIT B - Payment Order No. ______

PAYMENT SCHEDULE
FOR MACHINERY AND EQUIPMENT

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

PAYMENT SCHEDULE

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

______
Initials

APPENDIX B

FORM OF CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for NARAYAN, INC. (the "Tenant"), as tenant under a certain Lease dated as of December 1, 2020 (the "Lease") between the City of Abilene, Kansas (the "Issuer") and the Tenant, and as beneficiary of the Issuer's Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) issued pursuant to a certain Indenture dated as of December 1, 2020 (the "Indenture"), hereby certifies as follows. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and Lease.

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

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

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

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

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

6. All moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Debt Service Fund being held by the Trustee under the Indenture as required by *Section 5.04* of the Indenture, to be applied as provided therein.

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

____

STATE OF [__________])
) SS:
COUNTY OF [___________])

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

[SEAL]

____

Notary Public

My Appointment Expires: __________________

SCHEDULE I

SCHEDULE I TO THE LEASE AGREEMENT, DATED AS OF DECEMBER 1, 2020, BY AND BETWEEN CITY OF ABILENE, KANSAS AND NARAYAN, INC.

PROPERTY SUBJECT TO LEASE

(A) The following described real estate located in Dickinson County, Kansas, to wit:

LOT TWO (2) AND LOT FOUR (4), BLOCK ONE (1), FINAL PLAT OF MARTIN ADDITION, A REPLAT OF LOTS ONE (1) AND TWO (2), BLOCK ONE (1), FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS

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

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Land and financed or refinanced with proceeds of the Series 2020 Bonds.

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

NARAYAN, INC.
AS TENANT

CITY OF ABILENE, KANSAS
AS ISSUER

NARAYAN, INC.
AS PURCHASER

BOND PURCHASE AGREEMENT

NOT TO EXCEED $8,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)

BOND PURCHASE AGREEMENT

NOT TO EXCEED $8,000,000
CITY OF ABILENE, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)
Dated: December 1, 2020

THIS AGREEMENT entered into December 1, 2020 (the "Sale Date"), between NARAYAN, INC., a Kansas corporation (the "Company") the City of Abilene, Kansas (the "Issuer") and NARAYAN, INC., Abilene, Kansas (the "Purchaser"), collectively referred to herein as the "Parties." All capitalized terms not specifically defined herein shall have the same meaning as defined in the hereinafter referenced Indenture and Lease, unless some other meaning is plainly indicated.

SECTION 1. RECITALS.

(a) The Issuer proposes to issue and sell the Bonds identified above (the "Bonds") to provide funds to pay the costs of the acquisition, construction, furnishing and equipping of a hotel facility (the "Project") located within the corporate limits of the Issuer, to be leased by the Issuer to the Company pursuant to a Lease dated as of December 1, 2020 (the "Lease").

(b) Pursuant to the constitution and laws of the State of Kansas, including K.S.A. 12-1740 *et seq*. (the "Act"), the Bonds are limited obligations of the Issuer payable solely from the Trust Estate under the Indenture (hereinafter defined), including payments derived by the Issuer from the Lease. The Bonds will be dated December 1, 2020, will contain such other terms and provisions as are set forth in an ordinance duly passed by the governing body of the Issuer on November 23, 2020 (the "Ordinance"), and other proceedings and determinations related thereto as authorized and governed by the provisions of a Trust Indenture (the "Indenture") dated December 1, 2020 between the Issuer and BOKF, N.A., Kansas City, Missouri, as trustee (the "Trustee").

(c) In order to induce the Purchaser to enter into this Bond Purchase Agreement and to purchase the Bonds at a price and bearing interest at the rate or rates set forth in the Indenture, the Issuer and the Company have joined in this Bond Purchase Agreement.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS.

(a) On the basis of the representations, warranties and covenants contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds not later than 12:00 Noon, applicable Central time on December 1, 2020, or such other place, time or date as shall be mutually agreed upon by the Issuer and the Purchaser. The date of such delivery and payment is herein called the "Closing Date," the hour and date of such delivery and payment is herein called the "Closing Time" and the transactions to be accomplished for delivery of the Bonds on the Closing Date shall be herein called the "Closing." The Bonds shall be issued under and secured as provided in the Indenture and the Bonds shall have the maturities and interest rates as set forth therein. Bonds shall contain such other provisions as are described in the Indenture.

(b) The Parties acknowledge and agree that: (1) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm's-length commercial transaction between the Issuer and the

Purchaser; (2) in connection with such transaction, the Purchaser is acting solely as a principal and not as an agent or a fiduciary of any of the Issuer or the Company; (3) the Purchaser has not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer or the Company with respect to the offering of the Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Issuer or the Company on other matters) or any other obligation to the Issuer or the Company except with respect to the obligations expressly set forth in this Bond Purchase Agreement; and (4) the Issuer and the Company have consulted with their own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

(c) The Bonds are purchased by Purchaser under the following conditions: (i) the Bonds are not being registered or otherwise qualified for sale under the "Blue Sky" laws; (ii) Purchaser will hold the Bonds as one single debt instrument, (iii) no CUSIP numbers will be obtained for the Bonds, (iv) no official statement or other similar offering document has been prepared in connection with the private placement of the Bonds, and (v) the Bonds will not close through the DTC or any similar repository and will not be in book entry form.

(d) The delivery of the Bonds shall be made in definitive form, as fully registered bonds (in such denominations as the Purchaser shall specify in writing at least 48 hours prior to the Closing Time) duly executed and authenticated; provided, however, that the Bonds may be delivered in temporary form. The Bonds shall be available for examination by the Purchaser at least 24 hours prior to the Closing Time.

SECTION 3. REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE PURCHASER

By the execution hereof the Purchaser hereby represents, warrants and agrees with the Issuer and the Company that as of the date hereof and at the Closing Time:

(a) Purchaser, pursuant to all necessary corporate action, is authorized to purchase the Bonds and to execute and perform this Bond Purchase Agreement.

(b) Purchaser is knowledgeable and experienced in financial and business matters and is capable of evaluating investment merit and risks associated with its purchase of the Bonds. The Purchaser has been furnished and has reviewed the provisions of the Ordinance, Indenture and Lease relating to the authorization of and security for payment of the Bonds. Prior to the execution hereof Purchaser also obtained and examined such financial records and information necessary in order to enable itself to fully evaluate the terms and provisions of the Bonds and of the Indenture and Lease authorizing their issuance and providing for the payment thereof and the financial and investment merits and risks associated with the purchase of the Bonds. On the basis of such information materials and Purchaser's investigation, Purchaser has made the decision to purchase the Bonds and has not relied upon any representations of the Issuer or any of its officers or employees with respect to the Project, the Company or security for payment of the Bonds.

(c) Purchaser is purchasing the Bonds as an investment for its own account and not with a view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended. Purchaser acknowledges that (1) the Bonds will not be registered under the Securities Act of 1933, as amended or any applicable state securities law, (2) the Bonds may not be transferred unless, in the opinion of counsel acceptable to the Issuer and the Trustee, such transfer will not cause a violation of the Securities Act of 1933, as amended, or any applicable state securities law and that (3) language consistent with the foregoing restrictions will appear in the registration and transfer provisions of the Indenture.

(d) The Purchaser will indemnify and hold harmless the Issuer and its officials, and each person, if any, who controls the Issuer within the meaning of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, against any losses, claims, damages, or liabilities to which the Issuer may become subject under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Trust Indenture Act of 1939, as amended, the blue sky or securities laws of any state, or otherwise, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon the sale, redistribution or other disposition of the Bonds in a transaction which amounts to a public offering and is in violation of the Purchaser's covenants in subsection (c) above, and it will reimburse the Issuer for any legal or other expenses reasonably incurred by it in connection with investigating, defending, or preparing to defend any such action or claim.

SECTION 4. ISSUER'S REPRESENTATIONS.

The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows, all of which will continue in effect subsequent to the Closing:

(a) The Issuer is a municipal corporation incorporated as a city of the second class under the laws of the State of Kansas.

(b) The governing body of the Issuer did enact the Ordinance; it has been signed by a duly authorized official of the Issuer, it has been published once in the official city newspaper as required by law, and it is presently in full force and effect and has not been amended or modified.

(c) The Issuer has full power and authority to execute and deliver the Indenture, the Site Lease, the Lease, the Bond Purchase Agreement and any and all other documents reasonably necessary in connection with the Indenture, the Site Lease, the Lease and the Bond Purchase Agreement (the "Issuer Documents"); the Issuer Documents have been duly executed and delivered by the Issuer in the manner authorized and constitute legal, valid and binding obligations of the Issuer in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principles of equity or the exercise of judicial discretion.

(d) The execution, delivery and performance of the Issuer Documents will not conflict with or constitute on the part of the Issuer a material breach or default under any agreement, indenture or instrument known to it to which the Issuer is a party or by which it is bound.

(e) The Issuer has duly and validly authorized the taking on its behalf of any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Ordinance and the Issuer Documents.

(f) There is not now pending or, to the knowledge of the officials of the Issuer, threatened any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning (i) the validity of the Bonds, (ii) the proceedings or authority under which they are issued, (iii) the existence of the Issuer, (iv) the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or (v) the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds.

(g) Any certificate signed by an official of the Issuer and delivered to the Purchaser shall be deemed a representation by the Issuer to the Purchaser as to the truth of the statements made in such certificate.

SECTION 5. REPRESENTATIONS OF THE COMPANY.

The Company makes the following representations as of the Closing, all of which will continue in effect subsequent to the Closing:

(a) The Company is a duly formed Kansas corporation, duly authorized to do business under the laws of the State of Kansas.

(b) The Company has full power and authority to enter into, execute and deliver the Site Lease, the Lease and this Bond Purchase Agreement (the "Company Documents"), and to perform its obligations thereunder, all of which have been duly authorized by all proper and necessary corporate action, and no consent or approval of parties not signatories to this Bond Purchase Agreement or of any public authority other than the Issuer is necessary to carry out the same.

(c) The execution, delivery and performance by the Company of the Company Documents will not conflict with or constitute a material violation or breach of or a default under its articles of incorporation or bylaws, or any mortgage, indenture, deed of trust, contract, instrument or agreement binding on it or affecting its property, or any provision of law or order, rule, regulation, ordinance or decree of any court, government or governmental body having jurisdiction over the Company or any of its property.

(d) All written information (including financial statements) supplied by the Company which has been relied upon by Gilmore & Bell, P.C. ("Bond Counsel") and the Purchaser.

(e) To the actual knowledge of the officers of the Company signing this Bond Purchase Agreement, there is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Company, its officers or property, challenging the validity of the Company Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Company of its obligations thereunder, or challenging the acquisition or operation of the Project. Further, no litigation, proceeding, or investigation is pending or, to the knowledge of the officers of the Company signing this Bond Purchase Agreement, threatened, against the Company, its officers or property except (i) that arising in the normal course of the its business operations, and being defended by or on behalf of the Company, in which the probable ultimate recovery and estimated defense costs and expenses, in the opinion of the Company's management will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Company, would not, in the opinion of the Company's management, materially adversely affect the Company's operations or condition, financial or otherwise.

(f) The financial statements of the Company presented to the Purchaser, except as noted therein, present fairly and accurately the financial condition of the Company as of the dates indicated and the results of its operations for the periods specified, and such financial statements are prepared in conformity with generally accepted accounting principles consistently applied in all material respects for the periods involved. The Company has not, since the date of such financial statements, incurred any material liabilities and there has been no material adverse change in the condition of the Company, financial or otherwise, other than as set forth in such financial statements.

SECTION 6. REPRESENTATIONS TO SURVIVE CLOSING.

The representations, warranties, agreements, and indemnities of the Issuer, the Company and the Purchaser contained herein will survive the Closing and any investigation made by or on behalf of the Issuer, the Purchaser, the Company of any matters described in, or related to, the transactions contemplated hereby and by the Lease.

SECTION 7. CONDITIONS OF CLOSING.

The Purchaser's obligations to purchase the Bonds are subject to fulfillment of the following conditions at or before Closing:

(a) The representations of the Issuer and the Company hereunder must be true on and as of the Closing date and must be confirmed by certificates dated as of the Closing;

(b) Neither the Issuer nor the Company has defaulted in the performance of any of their respective covenants hereunder;

(c) The Purchaser must receive at the Closing:

(i) an opinion of Bond Counsel, dated as of the Closing, in form and substance satisfactory to the Purchaser and its counsel.

(ii) an opinion of counsel for the Company, dated as of the Closing, in form and substance satisfactory to Bond Counsel.

(iii) an opinion of counsel for the Issuer, dated as of the Closing, in form and substance satisfactory to Bond Counsel and to the Purchaser and its counsel.

(iv) a certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser and its counsel, of an authorized official of the Issuer dated the date of the Closing to the effect that (A) each of the representations of the Issuer set forth in *Section 4* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Issuer set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with; and (B) no litigation is pending, or to such official's knowledge, threatened, to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, the proceedings or authority under which they are issued, the existence of the Issuer, the authority of the Issuer to enact the Ordinance or enter into the Indenture, the Lease or the Bond Purchase Agreement, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds, and (C) that none of the proceedings authorizing issuance of the Bonds or execution and delivery of the bond documents has been repealed, revoked or rescinded.

(v) a certificate or certificates, satisfactory in form and substance to Bond Counsel and to the Purchaser and its counsel, of the authorized officer of the Company, dated the date of Closing to the effect that each of the representations of the Company set forth in *Section 5* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Company set forth in this Bond

Purchase Agreement to be complied with at or prior to the Closing has been complied with as of such time.

(vi) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Indenture and Lease, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

(d) At Closing, there shall not have been any adverse change in the business, property or financial condition of the Company from that furnished to the Purchaser which, in the judgment of the Purchaser, is material and makes it inadvisable to proceed with the sale of the Bonds; and the Purchaser shall have received a certificate from the Company that no material adverse change has occurred or, if such a change has occurred, full information with respect thereto.

SECTION 8. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel the obligation hereunder to purchase the Bonds (such cancellation shall not constitute a default for purposes of ***Section 1*** hereof) by notifying the Issuer and the Company in writing or by facsimile of its election to make such cancellation prior to the Closing Time, if at any time after the execution of this Bond Purchase Agreement and prior to the Closing Time, the market price or marketability of the Bonds, or the ability of the Purchaser to enforce contracts for the sale of the Bonds, shall be materially adversely affected by any of the following events:

(a) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the Legislature of the State or by any other governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State.

(b) A stop order, ruling, regulation or official statement by, or on behalf of, the SEC or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby, is in violation or would be in violation of any provision of the 1933 Act, the 1934 Act or the Trust Indenture Act of 1939, as amended.

(c) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act.

(d) A material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred; or additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

(e) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser.

(f) Any general banking moratorium shall have been established by federal, New York or Kansas authorities.

(g) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state.

(h) Any proceeding shall be pending or threatened by the SEC against the Issuer.

(i) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred.

(j) A default by or a moratorium initiated by the United States in respect to payment of any direct obligation of, or obligation the principal of and interest on which is fully and unconditionally guaranteed as to full and timely payment by, the United States of America.

SECTION 9. PAYMENT OF EXPENSES

(a) Whether or not the Bonds are sold by the Issuer to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), the Purchaser, unless otherwise contracted for, shall be under no obligation to pay any expenses incident to the performance of the obligations of the Issuer or the Company hereunder; nor shall the Issuer or the Company, unless otherwise contracted for, be under any obligation to pay any expenses incident to the performance of the obligations of the Purchaser hereunder (unless such sale be prevented at the Closing Time by the Issuer’s or the Company's default).

(b) If the Bonds are sold by the Issuer to the Purchaser, except as hereinafter set forth, all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds shall be paid by the Company out of the proceeds of the Bonds or other Company funds. Such expenses and costs shall include, but not be limited to: (1) the fees and disbursements of Bond Counsel; (2) the fees and disbursements of the Issuer's legal counsel; (3) fees and disbursements of the Company’s legal counsel; (4) the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Bonds this Bond Purchase Agreement and all other agreements and documents contemplated hereby; (5) fees of the Trustee; and (6) all costs and expenses of the Issuer relating to the issuance of the Bonds.

SECTION 10. NOTICES AND OTHER ACTIONS.

All notices, demands and formal actions hereunder will be in writing mailed, faxed or delivered to:

The Issuer: City of Abilene, Kansas
419 N. Broadway Ave.
P.O. Box 519
Abilene, Kansas 67410
Attn: City Clerk

The Company	NARAYAN, INC. 2369 Georgetown Road Salina, Kansas 67401 Attn: President
The Purchaser:	NARAYAN, INC. 2369 Georgetown Road Salina, Kansas 67401 Attn: President

SECTION 11. MISCELLANEOUS

(a) This Bond Purchase Agreement shall be binding upon the Parties and their respective successors. This Bond Purchase Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that the representations, warranties, indemnities and agreements of the Issuer and the Company contained in this Bond Purchase Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control the Purchaser (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act). Nothing in this Bond Purchase Agreement is intended or shall be construed to give any person, other than the persons referred to in this Paragraph, any legal or equitable right, remedy or claim under or in respect of this Bond Purchase Agreement or any provision contained herein. All of the representations, warranties and agreements of the Issuer contained herein shall remain in full force and effect, regardless of: (1) any investigation made by or on behalf of the Purchaser, (2) delivery of and payment for the Bonds; or (3) any termination of this Bond Purchase Agreement.

(b) For purposes of this Bond Purchase Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

(c) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(d) This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

(e) This Bond Purchase Agreement may not be assigned by either party without the express written consent of the other party.

SECTION 12. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the Issuer.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement and returning it to the undersigned.

NARAYAN, INC.
ABILENE, KANSAS

Date: _____________
Time: ____:____ __.m.

By: ______________________________
President

Accepted and agreed to as of
the date first above written.

NARAYAN, INC.

Date: _____________
Time: ____:____ __.m.

By:_________________________________
Title: President

CITY OF ABILENE, KANSAS

Date: _____________
Time: ____:____ __.m.

By: ______________________________
Mayor

ATTEST: (Seal)

By: ______________________________

CITY OF ABILENE

Item for City Commission Agenda

Meeting Date: 11/23/20

Originating Department	Prepared By:	Approved For Agenda By: *(Office Use Only)*
Administration	Marcus Rothchild	JF

AGENDA ITEM HEADING:

2021 Water & Sewer Utility Rate Increase

BACKGROUND:

In December of 2017, the City began discussions with Ranson Financial Group to review the City's water and sewer utility rates. After this review, it was evident that the current rates were not keeping up with the rising cost of production and operations for our public utilities. In 2019, the commission approved a rate adjustment plan that would help water and sewer rates breakeven with expenses within a three-year period. 2021 marks year two of this three-year plan and requires another increase to keep the City's water and sewer funds on the path to a healthy budget. These rates were discussed and presented to the City Commission in May while planning for the 2021 budget.

Sewer Rates	Inside City Limits		Outside City Limits	
	2020	2021	2020	2021
Monthly Minimum	$13.00	$14.82	$19.49	$22.22
Sewer Rate	$.542	$.618	$.812	$.926 (Sewer rate per 100 gallons of winter water use)

Water rates	Residential Inside City Limits		Residential Outside City Limits			Commercial Inside City Limits		Commercial Outside City Limits	
	2020	2021	2020	2021		2020	2021	2020	2021
Monthly Minimum	$16.12	$18.18	$32.25	$36.36		$16.12	$18.18	$32.25	$36.36
Water Rate	$.381	$.429	$.763	$.860		$.381	$.429	$.763	$.860
					(Tier 2)	$.322	$.363	$.644	$.726

FISCAL NOTE:

The average residential water bill (5,000 gallons) will see an increase of $4.46 per month.

The average residential sewer bill (5,000 gallons) will see an increase of $5.62 per month.

COMMISSION ACTION:

Consider adoption of new rates with ordinance amending City code.

ORDINANCE NO. 20-3394

AN ORDINANCE AMENDING CHAPTER 7, SECTIONS 7-505, 7-901, AND 7-902 OF THE CITY CODE OF THE CITY OF ABILENE PERTAINING TO SEWER AND WATER RATES WITHIN THE CITY OF ABILENE, KANSAS; AND REPEALING EXISTING SECTIONS 7-505, 7-901, AND 7-902.

BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Section 7-505 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-505. Sewer rates

The sewer rates for all residential, commercial and industrial users of the municipal wastewater collection and treatment system shall be a minimum monthly charge of fourteen dollars and eighty-two cents ($14.82), plus an additional monthly charge of sixty-one and eight-tenths cents ($0.618) for each 100 gallons of winter water use. The sewer rates for all extraterritorial residential, commercial and industrial users of the municipal wastewater collection and treatment system shall be a minimum monthly charge of twenty-two dollars and twenty-two cents ($22.22), plus an additional monthly charge of ninety-two and six-tenths cents ($0.926) for each 100 gallons of winter water use.

SECTION TWO. Section 7-901 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-901. Residential rates.

The monthly water rates for residential users shall be as follows:

(a) Monthly Usage Minimum Service Charge.

(1) Water usage as shown on the January, February and March billing is averaged to determine a water use average for both residential accounts. Usage that falls within this average will be billed at the Base Tier rate as established by ordinance.

(2) Any usage that exceeds the water use average by 20% (hereinafter “Base Tier Allotment”) will be billed at the Conservation Tier rate as established by ordinance for residential accounts. Any customer without an established water use average will be allotted fifty gallons per person per day until a new water use average is established. The water use average shall be recalculated annually after the March billing date.

(3) All residential usage that exceeds the Base Tier Allotment during times of official “Water Emergency” periods, as defined by Chapter 7, Article 10 will be

billed at the Emergency Tier rate for Water Emergency, as established by ordinance.

(b) Water Rates for Residential Customers. The water rates for residential consumers, and the effective dates of such rates, shall be determined by the governing body and shall be specified in an ordinance authorizing the same, and may be amended by ordinance of the governing body. The following rates are currently in effect at the time of passage of the ordinance from which this section is derived, and shall continue in full force and effect until any new or different rate goes into effect:

(1) Residential Inside City:

Monthly Minimum Charge:	$18.18
Base Tier:	$0.429 per 100 gallons
Conservation Tier:	Suspended
Emergency Tier: (declared water emergency only):	Suspended

(2) Residential Outside City:

Monthly Minimum Charge:	$36.36
Base Tier:	$0.860 per 100 gallons
Conservation Tier:	Suspended
Emergency Tier: (declared water emergency only):	Suspended

SECTION THREE. Section 7-902 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-902. Commercial rates.

The monthly water rates for commercial users shall be as follows:

(a) Water Rates for Commercial Customers. The water rates for business consumers, and the effective dates of such rates, shall be determined by the governing body and shall be specified in an ordinance authorizing the same, and may be amended by ordinance of the governing body. The following rates are currently in effect at the time of passage of the ordinance from which this section is derived, and shall continue in full force and effect until any new or different rate goes into effect:

(1) Commercial Inside City:

Monthly Minimum Charge:	$18.18
0-225,000 gallons:	$0.429 per 100 gallons
225,001 or higher:	$0.363 per 100 gallons
225,001 or higher (declared water emergency only):	Suspended

(2) Commercial Outside City:

Monthly Minimum Charge:	$36.36
0-225,000 gallons:	$0.860 per 100 gallons
225,001 or higher:	$0.726 per 100 gallons
225,001 or higher (declared water emergency only):	Suspended

(3) During times of official "Water Emergency" periods, as defined by Chapter 7, Article 10 commercial usage will be billed at the Emergency Tier rate for Water Emergency, as established by ordinance.

SECTION FOUR. Existing Sections 7-505, 7-901, and 7-902 are hereby repealed.

SECTION FIVE. This ordinance shall be in full force and effect on January 1, 2021, after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. 20-3394 Summary

On November 23, 2020, the City Commission passed Ordinance No. 20-3394. The ordinance amends Chapter 7, Sections 7-505, 7-901, and 7-902 of the City Code of the City of Abilene, Kansas pertaining to sewer and water rates within the City of Abilene, Kansas. The ordinance shall be in full force and effect on January 1, 2020, after the publication of this summary once in the official city newspaper. A complete copy of the ordinance is available online at www.abilenecityhall.com or in the office of the City Clerk, 419 N. Broadway Street in Abilene, Kansas, free of charge. This summary is certified by the City's legal counsel.

APPROVED AND PASSED by the Governing Body of the City of Abilene, Kansas, this 23rd day of November, 2020.

____
Chris Ostermann, Mayor

Attest:

____
Penny L. Soukup, CMC, City Clerk

The publication summary set forth above is certified this 23rd day of November, 2020.

____
Aaron O. Martin, City Attorney

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 11/23/2020

Originating Department	Prepared By:	Approved For Agenda By: (*Office Use Only*)
Public Works	Lon	JF

AGENDA ITEM HEADING:

Consider renewal of City Engineer contract with Olsson and Associates

BACKGROUND:

In 2015, a selection committee, made up of City staff, invited Engineering firms to present qualifications to provide on call/as needed services to the City. Three companies were selected out of 12-15 companies for live presentations with Olsson and Associates being chosen. Their contract was for a three year period.

Per the initial contract the same process was repeated in April of 2018. Other than myself, a whole new selection committee was formed and Olsson and Associates was again chosen to provide their services. In April 2021, it will be time to review/renew these engineering services.

It is very probable that the next three years will see major changes in our City senior leadership with retirements looming. Most likely many of our infrastructure projects that planning and design phases have been or soon will be started by Olsson and Associates will take place or be completed with new leadership. A list of these would include NW 14th, Rogers Street, CCLIP Buckeye,(2 year) street projects. The development of Well #23, water and sewer modeling, the SE storm drainage improvements, Airport work, the Northwest Industrial/commercial street and utility development as well as many others that have had initial discussions.

For these reasons, staff is requesting the City Commission consider negotiating and renewing the contract with Olsson and Associates for 2021- 2024 under the same guidelines. We feel that this action will best maintain continuity throughout the completion of these projects.

FISCAL NOTE:

Olsson will provide a scope of services and cost for the projects individually as they have in the past. Occasionally we pay them hourly rates for their services as we request them.

COMMISSION ACTION OPTIONS:

Consider approval of renewal of City Engineering services with Olsson and Associates for 2021-2024.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

November 12, 2020

City of Abilene
419 N. Broadway
P.O. Box 510
Abilene, Kansas 67410

Re: **MASTER AGREEMENT FOR PROFESSIONAL SERVICES**
ON-CALL ENGINEERING SERVICES (2021-2024)

It is our understanding that the City of Abilene ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Master Agreement for Professional Services, Olsson's General Provisions, Federal Contract Provisions, and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement").

The purpose of the Agreement is to provide the Client and Olsson with an operating agreement covering on-going services provided to Client. Upon request for services from the Client, Olsson will send to the Client a proposed **Work Order** for approval by Client. The Work Order will include the project location, anticipated start and completion dates, project description, compensation, and the Scope of Services. Olsson will commence work on individual projects upon receipt of a signed Work Order.

Olsson has acquainted itself with the information provided by Client relative to the Master Agreement and based upon such information offers to provide the services described in each Work Order. Client warrants that it is either the legal owner of the property to be improved by each Work Order or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached hereto), which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Master Agreement and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide Client the Scope of Services for Projects as specified in each project Work Order. Olsson shall invoice Client for all services as outlined in each project Work Order. Olsson's services may vary for each project. Olsson shall not commence work on any Work Order without Client's prior approval in writing.

Olsson agrees to provide all of its services in a timely, competent, and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR SERVICES

Details of the schedule for each project will be outlined in the Work Order.

COMPENSATION

Compensation for each project will be outlined in the Work Order. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of the invoice date.

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Agreement and the Agreement will represent the entire understanding between Client and Olsson with respect to any project subject to a Work Order. The Agreement may only be modified in writing signed by both parties.

Unless otherwise set forth in writing, Client's designated representative shall be the City Manager.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson, 302 S. 4th Street Suite 110, Manhattan, Kansas 66502. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By ______________________________
Brad Sonner, PLA, LEED AP
Vice President

By ______________________________
Jamie Fain, P.E.
Vice President

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

CITY OF ABILENE

By ______________________________
Signature

Printed Name ____________________

Title ____________________________

Dated: __________________________

<u>Attachments</u>
General Provisions

(Example - Do Not Use - See *Master Agreement Work Order*)

WORK ORDER

This exhibit dated ______________________is hereby attached to and made a part of the Master Agreement for Professional Services dated ________________________ between ______________________________ ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is as indicated below.

GENERAL

Olsson has acquainted itself with the information provided by Client relative to the project and based upon such information offers to provide the services described below for the project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: ____
Project Description: ____

(**Scope of Services, Schedule for Services**, and **Compensation** shall be defined on a case by case basis.)

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project representative shall be _____________________________.

If this Work Order satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of ______ days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By _____________________________
Type Name Here (Optional)

By _____________________________
Type Name Here (Optional)

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept this Work Order, please sign:

NAME OF CLIENT

By _____________________________
Signature
Print Name ______________________

Title ____________________________ Dated: _________________________

<u>Attachments</u>
(If Applicable)

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated November 12, 2020 between City of Abilene, Kansas (“Client”) and Olsson, Inc. (“Olsson”) for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the “Project(s)”).

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON’S SCOPE OF SERVICES

Olsson’s scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement (“Scope of Services”).

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 (“Optional Additional Services”), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client’s award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client’s contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) (“Necessary Additional Services”), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation (“Claim”) against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the “Certificate”). The Certificate shall be executed by an independent engineer (“Certifying Engineer”) currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years ; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client’s failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement (“Work Product”), are all Olsson’s instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in “as is” condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client’s responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney’s and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson’s Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson’s Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson’s Opinion of Probable Cost was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

CITY OF ABILENE

*Check Summary Register©

Batch: 112320PAY

	Name	Check Date	Check Amt	
002000	**Astra Bank checking**			
30728	ABILENE PRINTING & OFFICE	11/23/2020	$1,156.43	WINDOW ENVELOPES & CHECKS
30729	ABILENE PUBLIC LIBRARY	11/23/2020	$3,537.01	ABILENE PUBLIC LIBRARY COVID-19/SPAR
30730	BATHURST, CHARITY	11/23/2020	$50.00	REFUND JR. COWBOY FB FEE
30731	BAYHA, STACEE	11/23/2020	$50.00	REFUND JR. COWBOY FB FEE
30732	CATLETT AUTOMOTIVE INC	11/23/2020	$63.25	OIL FILTERS
30733	CORE & MAIN	11/23/2020	$7,344.68	METER TRANSMITTERS/RADIOS
30734	D S & O RURAL ELECTRIC COOP	11/23/2020	$166.18	ELECTRIC SERVICE @ LIGHT STOVR, COR
30735	DAHLSTROM LAW OFFICE, LLC	11/23/2020	$750.00	SMITH 20-0078, 20-0079, 20-0087
30736	DK CTY ADMINISTRATION	11/23/2020	$63,543.57	DK CTY/POLICE COVID-19 VOLUME ORDER
30737	DK CTY TREASURER	11/23/2020	$13,234.30	PROPERTY TAX @ CVB, 511 NW 2ND, INDU
30738	DON'S TIRE & SUPPLY	11/23/2020	$83.00	HUSTLER FRONT TIRE
30739	EAGLE TECHNOLOGY SOLUTIO	11/23/2020	$2,300.56	NOV BACKUP, BDR, BC/OFFICE 365/AV-PM
30740	EGOV STRATEGIES, LLC	11/23/2020	$1,192.90	OCT 2020 FEES FOR EGOV PAYMENTS
30741	FAIRBANK EQUIPMENT, INC	11/23/2020	$1,299.45	NEW CLUTCH FOR WOOD CHIPPER
30742	FALLS, CHRISTOPHER	11/23/2020	$15.00	REFUND OVERPAYMENT 19-0142
30743	FLORA, COURTNEY	11/23/2020	$60.00	REFUND MPR RENTAL
30744	HEART OF AMERICA USA	11/23/2020	$580.00	HOA TOURNEY DIR. DEPOSIT & HOA TOUR
30745	HOLT MOTORS, LLC	11/23/2020	$424.82	VEHICLE REPAIRS
30746	JACKSON, ADRIENNE	11/23/2020	$80.00	REFUND MPR RENTAL - MARCH 2020
30747	JERRY MILLER ELECTRONICS	11/23/2020	$1,690.00	NOV 2020 AWOS/REBUILD COMPUTER PR
30748	JOHNSON, LEANN	11/23/2020	$82.46	MILEAGE CONCORDIA
30749	JOYCELYN LUCAS RANDLE LAW	11/23/2020	$500.00	AITA 20-0006, KRAMER 20-0170
30750	KA-COMM, INC.	11/23/2020	$179.00	RADIO REPAIR
30751	KANSAS BUILDING PRODUCTS	11/23/2020	$294.00	BRICKS FOR KIOSK @ CITY HALL
30752	KSFFA	11/23/2020	$50.00	YEARLY MEMBERSHIP DUES FOR 2021
30753	LAST CHANCE GRAPHICS	11/23/2020	$306.00	PRINTING HALLOWEEN BAGS
30754	LEAGUE KS MUNICIPALITIES	11/23/2020	$299.00	KACM FALL CONF. REGISTRATION
30755	LINDER ELECTRIC	11/23/2020	$160.00	NETS @ COMPLEX
30756	LIONS CLUB	11/23/2020	$72.60	TIMBROOK DUES
30757	LUMBER HOUSE TRUE VALUE	11/23/2020	$266.33	ABILENE SIGNS
30758	MAAS, JOY	11/23/2020	$119.94	3 LATERNS FOR CIVIC CENTER LIGHTS
30759	PACE ANALYTICAL SERVICES	11/23/2020	$1,285.80	EFFLUENT SAMPLES
30760	PRAIRIE FIRE COFFEE	11/23/2020	$91.80	COFFEE @ WWTP
30761	QUADIENT FINANCE USA, INC	11/23/2020	$426.00	POSTAGE
30762	ROLLER-WEEKS, JULIE	11/23/2020	$87.86	MILEAGE TO TIAK BOARD RETREAT
30763	S & K ELECTRIC	11/23/2020	$590.00	REPLACE LIGHTS @ SKATE PARK
30764	SITEONE LANDSCAPE SUPPLY	11/23/2020	$1,048.22	2 TREES FOR CC/TREES & BUSHES FOR CI
30765	SMITH HEATING & AIR	11/23/2020	$298.00	FURNACE SERVICED & REPAIRED NEXT D
30766	SUPERIOR SANITATION SERVIC	11/23/2020	$420.00	NOV TRASH SERVICE @ CVB, RECYCLE &
30767	TRAILS END CAR WASH	11/23/2020	$11.00	TRUCK WASH
30768	US BANK EQUIPMENT FINANCE	11/23/2020	$574.40	COPIER MONTHLY CONTRACT PAYMENT
30769	US PAYMENTS LLC	11/23/2020	$20,891.58	KIOSK @ CITY HALL
30770	VANDERBILTS NO. 4, INC	11/23/2020	$434.98	BOOTS
30771	VERIZON	11/23/2020	$1,416.57	CELL PHONE SERVICE
30772	VISA - UMB ADMINISTRATION	11/23/2020	$7,187.95	TELEPHONE/INTERNET
30773	VISA - UMB AIRPORT	11/23/2020	$74.90	INTERNET
30774	VISA - UMB CVB	11/23/2020	$1,627.75	OFFICE SUPPLIES
30775	VISA - UMB FIRE DEPT	11/23/2020	$565.89	MISC SERVICES
30776	VISA - UMB INSPECTION	11/23/2020	$210.15	OFFICE SUPPLIES
30777	VISA - UMB PARKS	11/23/2020	$3,482.91	JANITOR SUPPLIES
30778	VISA - UMB PUBLIC WORKS	11/23/2020	$1,357.40	OFFICE SUPPLIES
30779	WATCHGUARD VIDEO	11/23/2020	$2,450.00	SOFTWARE MAINT & WARRANTIES
30780	WEIS FIRE & SAFETY EQUIPME	11/23/2020	$1,595.00	BLITZ FORCE MONITOR STORAGE BRACK
		Total Checks	$146,078.64	

CITY OF ABILENE

*Check Summary Register©

Batch: 112320PAY

Name	Check Date	Check Amt

FILTER: (([Act Year]='2020' and [period] in (11))) and (Source in ('112320PAY'))

City of Abilene
Payroll Expenditures Report
11/13/2020 PR #23

PAYROLL CODE		TOTALS			
	NET SALARIES	$	70,279.03		
051 & 501	OASDI - CITY/EMPLOYEE	$	12,429.50		
049 & 502	MEDICARE - CITY/EMPLOYEE	$	2,906.88		
001	FEDERAL WITHHOLDING - EMPLOYEE	$	8,053.40		
503	KPERS - CITY	$	5,906.26		
056, 057, 059	KPERS EMPLOYEE	$	3,687.56	**$**	**9,593.82**
505	KPERS RETIREE/EMPLOYER	$	-		
153	KPERS GROUP LIFE - EMPLOYEE	$	113.27		
504	KPF - CITY	$	8,935.16		
61	KPF EMPLOYEE	$	2,913.18	**$**	**11,848.34**
155	KPF GROUP LIFE- EMPLOYEE	$	79.81		
105 & 540	WADDELL & REED 457 - CITY/EMPLOYEE	$	1,430.00		
204	WADDELL & REED 529 - EMPLOYEE	$	50.00		
110	WADDELL & REED SAVINGS - EMPLOYEE	$	465.00		
130 & 530	ICMA 457 CITY/EMPLOYEE	$	-		
005	STATE TAX - EMPLOYEE	$	4,237.31		
120	AFLAC After Tax D&L - EMPLOYEE	$	177.41		
170	AFLAC Before Tax INSURANCE - EMPLOYEE	$	618.00		
102	VISION CARE DIRECT - EMPLOYEE	$	118.14		
104	VSP VISION PLANS - EMPLOYEE	$	171.13		
140	HEALTH INSURANCE - EMPLOYEE	$	5,142.66		
510	HEALTH INSURANCE - CITY	$	15,820.30	**$**	**20,962.96**
103	HEALTH SAVINGS ACCOUNT - EMPLOYEE	$	225.00		
506	HEALTH SAVINGS ACCOUNT - CITY	$	262.50		
111 & 520	IMPACT SPORTS & FITNESS- CITY/EMPLOYEE	$	314.89		
114 & 560	ABILENE PHYSICAL THERAPY - CITY/EMPLOYEE	$	-		
200	KS PAYMENT CENTER SUPPORT - EMPLOYEE	$	168.46		
206	CALIFORNIA CHILD SUPPORT - EMPLOYEE	$	369.23		
150	FLEXIBLE SPENDING ACCOUNT - EMPLOYEE	$	1,330.00		
121	POLICE & FIREMENS INS. - EMPLOYEE	$	20.92		
211	GARNISHMENT - EMPLOYEE	$	210.04		
	TOTAL PAYROLL EXPENDITURES	**$**	**146,435.04**		