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**AMENDED AND RESTATED INSTALLMENT PURCHASE AND USE AGREEMENT**

**between**

**SCAGO EDUCATIONAL FACILITIES CORPORATION FOR SPARTANBURG  
SCHOOL DISTRICT NO. 5**

**as Seller**

**and**

**SCHOOL DISTRICT NO. 5 OF SPARTANBURG COUNTY, SOUTH CAROLINA**

**as Buyer**

\_\_\_\_\_  
**\$\_\_\_\_\_ Installment Purchase Refunding Revenue Bonds  
(School District No. 5 of Spartanburg County Project) Series 2013**  
\_\_\_\_\_

**Dated October \_\_\_, 2013**

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**All rights, title and interest of SCAGO Educational Facilities Corporation for Spartanburg School District No. 5 in this Installment Purchase and Use Agreement (with certain exceptions) have been assigned to Wells Fargo Bank, N.A., as trustee (the “Trustee”) under the Amended and Restated Trust Agreement dated of even date herewith (the “Trust Agreement”), and are subject to the security interest of the Trustee.**

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## **AMENDED AND RESTATED INSTALLMENT PURCHASE AND USE AGREEMENT**

This AMENDED AND RESTATED INSTALLMENT PURCHASE AND USE AGREEMENT dated October \_\_, 2013 (the "Purchase and Use Agreement") is made and entered into by and between SCAGO Educational Facilities Corporation for Spartanburg School District No. 5 (together with its successors and assigns, the "Corporation"), a nonprofit corporation formed under the laws of the State of South Carolina (the "State"), as seller, and School District No. 5 of Spartanburg County, South Carolina (the "School District"), a school district and political subdivision organized under the laws of the State, as buyer.

### **WITNESSETH**

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31, Code of Laws of South Carolina 1976, as amended; and

WHEREAS, the School District is a school district and body politic and corporate and a political subdivision of the State and is authorized under the provisions of Sections 59-17-10 and 59-19-10 through 19-19-190, inclusive, Code of Laws of South Carolina 1976, as amended (the "Act"), to enter into this Purchase and Use Agreement; and

WHEREAS, the Corporation and the School District have heretofore entered into a Base Lease and Conveyance Agreement dated December 14, 2005 (the "2005 Base Lease") pursuant to which the School District leased the 2005 Real Property and conveyed the Conveyed Improvements (as such terms are defined in the 2005 Base Lease), in order for the Corporation to acquire certain real property and the construct thereon certain educational facilities and the acquire, construct, renovate and equip certain existing educational facilities (collectively, the "2005 Projects"); and

WHEREAS, in order to provide funds to defray the costs of refunding the 2005 Bonds (as herein defined), the Corporation will provide for the issuance \$\_\_\_\_\_ of its Installment Purchase Refunding Revenue Bonds (School District No. 5 of Spartanburg County, South Carolina, Project) Series 2013, dated October \_\_, 2013 (the "Series 2013 Bonds") under and by the terms of an Amended and Restated Trust Agreement dated of even date herewith (the "2013 Trust Agreement") by and between the Corporation and Wells Fargo Bank, N.A., as trustee (the "Trustee"); and

WHEREAS, this Purchase and Use Agreement will constitute a "refinancing agreement" as described in Section 11-27-110(11) of the South Carolina Code in that such Agreement: (i) refinances an asset (e.g., the 2005 Projects) acquired under the terms of a contract that is not a "financing agreement" (as defined in Section 11-27-110(6) of the South Carolina Code) solely by virtue of such contract (e.g., the 2005 Installment Purchase and Use Agreement) being dated prior to September 1, 2006, and (ii) as a condition to the issuance of the Series of the Series 2013 Bonds, the sum of all payments to be made under this Purchase and Use Agreement will be less than the sum of the payments to be made under the contract it refinances, i.e., the 2005 Installment Purchase and Use Agreement; and

WHEREAS, the Corporation and the School District will amend and restate the 2005 Installment Purchase and Use Agreement pursuant to the terms and provisions of this Installment Purchase and Use Agreement; and

WHEREAS, the School District has agreed to make certain payments (the "Installment Payments") for the acquisition of the 2013 Facilities (as defined herein) and, shall be entitled to the use and occupancy of the 2013 Facilities and certain other matters; and

WHEREAS, the rights to receive Installment Payments are being assigned to the Trustee under the 2013 Trust Agreement as security and the source of payment for the Series 2013 Bonds;

NOW, THEREFORE, for and in consideration of the undertaking of the Corporation to issue the Series 2013 Bonds, the undertaking of the School District to pay the Installment Payments hereunder, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Corporation and the School District, intending to be legally bound, do hereby agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 1.1. Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided therefor in the 2013 Trust Agreement or as set forth below:

"2005 Base Lease and Conveyance Agreement" means the Base Lease and Conveyance Agreement dated December 14, 2005, between the School District and the Corporation.

"2005 Bonds" means the \$79,000,000 original principal amount Installment Purchase Revenue Bonds (School District No. 5 of Spartanburg County Project), Series 2005, dated December 14, 2005, heretofore issued by the Corporation and presently outstanding in the principal amount of \$68,455,000.

"2005 Installment Purchase and Use Agreement" means the Installment Purchase and Use Agreement dated December 14, 2005, between the Corporation and the School District.

"2005 Projects" means the acquisition, construction and equipping of new educational facilities and the renovation of certain existing educational facilities all as described on Exhibit A to the 2005 Installment Purchase and Use Agreement.

"2013 Facilities" means the 2013 Real Property, the Conveyed Improvements and any future additions, modifications and substitutions to any facilities thereon and any school related personal property such as desks, tables, chairs, books, office and school supplies and equipment, teaching materials, physical education equipment, audio-visual equipment and other items of personalty, but only to the extent such items have been acquired with the proceeds of Bonds.

"2013 Real Property" means the respective parcels of real property, situated in the School District and described in Exhibit B hereof as the same may be amended from time to time and upon which the 2013 Facilities are located.

“Additional Facilities” means any educational facilities of the School District in addition to the 2013 Facilities proposed to be acquired, improved, renovated or constructed by the Corporation with the proceeds of Additional Bonds and made subject to this Purchase and Use Agreement.

“Additional Payments” means that portion of the Installment Payments specified in Sections 4.1, 4.2 and 4.4 hereof as Additional Payments.

“Additional Real Property” means any real property in addition to the 2013 Real Property that is or will become the site of Additional Facilities.

“Base Lease” means the Amended and Restated Base Lease and Conveyance Agreement dated of even date herewith, between the School District and the Corporation, as it may be amended or modified from time to time.

“Base Payments” means that portion of the Installment Payments specified in Section 4.1 hereof as Base Payments.

“Board of Trustees” means the Board of Trustees of School District No. 5 of Spartanburg County, South Carolina, as the governing body of the School District and any successor body.

“Bond Fund” means the fund of such name established pursuant to Section 5.5 of the Trust Agreement.

“Bond Proceeds” means the gross proceeds received from the issuance and sale of the Series 2013 Bonds.

“Bond Resolution” means the respective bond resolutions to be adopted by the Board of Trustees each year which authorize the issuance of general obligation bonds of the School District, the proceeds of which will be applied to make all or a portion of the Base Payments when due under this Purchase and Use Agreement.

“Conveyed Improvements” means those certain improvements presently existing on the 2013 Real Property, as more particularly described in Exhibit B-1 hereof.

“Corporation Facilities” means that portion of the 2013 Facilities allocated to the Corporation as the result of a partition under the provisions of Section 2.4 hereof.

“Costs of Issuance Account” means the account of such name established pursuant to Section 5.2 of the 2013 Trust Agreement.

“Environmental Laws” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidances, orders and consent decrees relating to health, safety and environmental matters, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act

of 1986, as amended, state and federal superfund and environmental cleanup programs and laws and U.S. Department of Transportation regulations.

“Event of Default” means the events set forth in Section 8.1 of this Purchase and Use Agreement.

“Event of Nonappropriation” means the School District’s failure, for any reason, to specifically budget and appropriate moneys to pay, or adopt a resolution authorizing the issuance of general obligation bonds for the purpose of paying, all Installment Payments due under this Purchase and Use Agreement by September 15 of the then current Fiscal Year or the School District shall have provided written notice of its intention to do the same by June 30 of the previous Fiscal Year. The existence or nonexistence of an Event of Nonappropriation shall be deemed to occur on (a) September 15 of a year in which no such budget or resolution shall have been adopted, or (b) any earlier date on which the School District gives official, specific written notice to the Corporation and the Trustee that the School District will not appropriate funds in the next succeeding Fiscal Year for payment of Installment Payments; provided, however, that an Event of Nonappropriation may be waived as provided for in Section 4.7 herein.

“Facilities Component” means an entire school or other facility including the main building or buildings and any related auxiliary buildings (and any furnishings and equipment located therein) comprising the 2005 Projects and the Conveyed Improvements together with the portion of the 2013 Real Property on which such school or other facility is located.

“Fiscal Year” means the fiscal year of the School District, currently beginning on each July 1 and ending on the succeeding June 30.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Hazardous Material” means and includes any pollutant, contaminant, or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead), the generation, handling, storage, transportation, disposal, treatment, release, discharge or emission of which is subject to any Environmental Law.

“Installment Payments” means the payments to be paid by the School District pursuant to Sections 4.1, 4.2 and 4.4 hereof including Base Payments and Additional Payments.

“Net Proceeds” when used with respect to any proceeds from policies of insurance required hereby or any condemnation award, or proceeds from any liquidation of any part of the 2013 Facilities, means the amount remaining after deducting from the gross proceeds thereof all expenses, including, without limitation, reasonable attorney’s fees and costs) incurred in the collection of such proceeds or award.



“Partition Consultant” means a person, firm or corporation selected by the Corporation [Purchaser], who or which is experienced in public finance and in the valuation of public educational facilities and is not a full-time employee of the the School District, the Corporation or the Purchaser.

“Partition Date” shall have the meaning given such term in Section 2.4 hereof.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Sections 4.1 and 4.2, respectively, of this Purchase and Use Agreement; (ii) the Security Documents; (iii) utility, access and other easements and rights-of-way, restrictions and exceptions which does not interfere with or impair the use of the 2013 Facilities, including rights or privileges in the nature of easements; (iv) any financing statements filed to perfect security interests pursuant to this Purchase and Use Agreement or the Trust Agreement; and (v) the matters described on Exhibit C hereto.

“Purchase Option Price” means an amount equal to the amount required to defease or otherwise discharge the Series 2013 Bonds under the 2013 Trust Agreement plus the amount of any Additional Payments which are due or accrued hereunder at the time which any purchase option hereunder is exercised.

“Purchase Price” means the sum of all Base Payments to be made hereunder which Purchase Price may be recalculated in the event of any prepayment of Base Payments provided for in Section 9.1 hereof.

“Purchaser” means the original purchase (or, if more than one purchaser, collectively, the original purchasers) of the Series 2013 Bonds.

“School District Facilities” means that portion of the 2013 Facilities allocated to the School District as the result of a partition under the provisions of Section 2.4 hereof.

“Security Documents” means this Purchase and Use Agreement, the Base Lease, the 2013 Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Holders of the Series 2013 Bonds.

“Series 2013 Bond” or “Series 2013 Bonds” means any or all of \$\_\_\_\_\_ of the Corporation’s Installment Purchase Refunding Revenue Bonds (School District No. 5 of Spartanburg County Project) Series 2013, dated of even date herewith, authorized by and secured under the 2013 Trust Agreement.

“State” means the State of South Carolina.

“Waiver Period” means the period of time commencing on the date an Event of Nonappropriation is deemed to occur and ending and including July 31 following the commencement of a Fiscal Year first affected by an Event of Nonappropriation; provided, however, that the Waiver Period shall in no event extend beyond the October 1 next following the date of the occurrence of an Event of Nonappropriation.

**SECTION 1.2. Terms Defined in the Trust Agreement.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the 2013 Trust Agreement unless the context clearly indicates to the contrary.

**SECTION 1.3. School District Representations, Warranties and Covenants.** The School District makes the following representations, warranties and covenants:

(a) The School District is a school district and a body politic and corporate and a political subdivision of the State and has full power and legal right to enter into this Purchase and Use Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The School District's actions in making and performing its obligations under this Purchase and Use Agreement and the Base Lease have been duly authorized by all necessary governmental action and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the School District or its properties are bound.

(b) The School District is a political subdivision within the meaning of Section 103(c) (1) of the Code.

(c) The School District will take such action as is necessary to ensure that the proceeds of the Series 2013 Bonds are applied as set forth in the 2013 Trust Agreement.

(d) No portion of the 2013 Facilities will be used in the trade or business of a person who is not a "political subdivision" within the meaning of Section 103(c)(1) of the Code, without a Favorable Opinion of Bond Counsel.

(e) There is no fact which will materially and adversely affect the properties, activities, operations, revenues, prospects or condition (financial or otherwise) of the School District, its status as a political subdivision of the State within the meaning of Section 103(c)(1) of the Code, its ability to own and operate its property in the manner such property is currently operated or its ability to perform its obligations under this Purchase and Use Agreement and the Base Lease.

(f) There are no proceedings pending or, to the knowledge of the School District, threatened against or affecting the School District in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, operations, prospects or condition (financial or otherwise) of the School District, or the corporate existence or powers or ability of the School District to enter into and perform its obligations under this Purchase and Use Agreement or the Base Lease.

(g) The execution and delivery of this Purchase and Use Agreement and the Base Lease (collectively, the "School District Agreements"), and the consummation of the transactions provided for herein and therein, and compliance by the School District with the provisions of the School District Agreements:

(i) are within the governmental powers and have been duly and validly authorized by all necessary governmental and other action on the part of the School District; and

(ii) do not and will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, loan agreement or other agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the School District (other than this Purchase and Use Agreement) or any governmental restriction to which the School District is a party or by which the School District, its properties or operations may be bound or with the giving of notice or the passage of time or both would constitute such a breach or default or result in the creation or imposition of any such lien, charge or encumbrance, which breach, default, lien, charge or encumbrance could materially and adversely affect the validity or the enforceability of the School District Agreements or the School District's ability to perform fully its obligations under the School District Agreements; nor will such action result in any violation of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the School District, its properties or operations are subject.

(h) No event has occurred and no condition exists that constitutes an Event of Default or which, upon the execution and delivery of this Purchase and Use Agreement, and/or the passage of time or giving of notice or both, would constitute an Event of Default. The School District is not in violation in any material respect, and has not received notice of any claimed material violation (except such violations as do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the School District with the terms hereof, or the Security Documents), of any terms of any court order, statute, regulation, ordinance, agreement, or other instrument to which it is a party or by which it, its properties or its operations may be bound.

(i) This Purchase and Use Agreement is a legal, valid and binding obligation and agreement of the School District, enforceable against the School District in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity; anything herein to the contrary notwithstanding, this Purchase and Use Agreement is subject in its entirety to the right of the School District to terminate this Purchase and Use Agreement and all the terms and provisions hereof by failing to budget and appropriate moneys specifically to pay Installment Payments, as provided in Sections 2.2, 4.6 and 4.7 hereof.

(j) The use and the operation of the 2013 Facilities in the manner contemplated will not conflict in any material respect with any zoning, water or air pollution or other ordinance, order, law, rule, or regulation applicable to the 2013 Facilities including, without limitation, Environmental Laws. The School District will operate or will cause the 2013 Facilities to be operated in compliance with the requirements of all such laws, ordinances, rules and regulations, including, without limitation, Environmental Laws. The School District further covenants and agrees to comply in all material respects with and materially conform to, or use its reasonable efforts to cause other persons whose obligations it is to so comply by contract or pursuant to law to comply in all material respects with and materially conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and every applicable governmental authority, including Environmental Laws applicable to the 2013 Facilities, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration,

repair or reconstruction of the 2013 Facilities, including building and zoning codes and ordinances (collectively, the “Legal Requirements”), provided that the School District shall not be in default hereunder so long as the School District promptly after receiving an actual written notice of any noncompliance, files a copy thereof with the Trustee and the School District commences and uses its diligent efforts to cause compliance with such Legal Requirements, as long as the failure to comply and conform does not subject the 2013 Facilities to any material danger of being forfeited or lost as a result thereof. The School District possesses or will possess, and the School District hereby agrees to maintain and obtain in the future, all necessary licenses and permits, or rights thereto, to operate the 2013 Facilities as proposed to be operated, and all such licenses, permits or other approvals required in connection with the operation of the 2013 Facilities have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals that are not yet required and that will be duly obtained not later than the time required or the failure to obtain which will not materially and adversely affect the operation of the 2013 Facilities. The School District covenants and agrees to do all things necessary to preserve and keep in full force and effect its franchises, rights, powers and privileges as the same relate to the 2013 Facilities.

(k) The School District has approved the Corporation and the issuance by the Corporation of the Series 2013 Bonds.

(l) The School District has not terminated any lease, lease-purchase agreement or installment purchase agreement by nonappropriation.

(m) The officer of the School District at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board of Trustees in any Fiscal Year in which this Purchase and Use Agreement shall be in effect, items for all Installment Payments required for such Fiscal Year under this Purchase and Use Agreement.

(n) To its knowledge, Hazardous Materials have not at any time been generated, used, treated, recycled, stored on, or transported to or from, or released, deposited or disposed of on the 2005 Real Property [relating to the D.R. Hill Middle School] other than in compliance at all times with all applicable Environmental Laws unless any such noncompliance could have a material adverse effect on the financial condition, business or operations of the School District.]

**SECTION 1.4. Corporation Representations, Warranties and Covenants.** The Corporation makes the following representations, warranties and covenants:

(a) The Corporation is a duly organized and validly existing nonprofit corporation created under the laws of the State, has the requisite power to carry on its present and proposed activities, and has full power, right and authority to enter into this Purchase and Use Agreement, the 2013 Trust Agreement and the Base Lease and to perform each and all of the obligations of the Corporation provided therein.

(b) The Corporation has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this

Purchase and Use Agreement, the Base Lease, the 2013 Trust Agreement and each of the Acquisition and Construction Contracts to which it is or will be a party.

(c) By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Purchase and Use Agreement, the Base Lease and the 2013 Trust Agreement.

(d) The execution and delivery by the Corporation of this Purchase and Use Agreement, the Base Lease and the 2013 Trust Agreement and the consummation by the Corporation of the transactions contemplated hereby and thereby have not and will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(e) Each of this Purchase and Use Agreement, the Base Lease and the 2013 Trust Agreement has been or will be duly executed and delivered by the Corporation and constitutes or will constitute a legal and valid obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as enforcement may be limited by laws affecting creditors' rights generally and except as equitable remedies may be limited by judicial discretion.

(f) Other than as disclosed to the Purchaser, there is no litigation pending and served on the Corporation that challenges the Corporation's authority to execute, deliver or perform its obligations under this Purchase and Use Agreement and the Corporation has disclosed any threatened litigation with respect to such matters of which the Corporation is aware.

(g) The Corporation is in material compliance with all applicable laws, regulations and ordinances, including but not limited to those applicable to the Corporation's activities in connection with this Purchase and Use Agreement.

(h) The Corporation is a South Carolina nonprofit, public benefit corporation, no part of the net income of which inures to the benefit of any private individual or organization.

(i) In order to refund the 2005 Bonds, the Corporation will enter into the 2013 Trust Agreement pursuant to which it will issue the Series 2013 Bonds payable from and secured by the Installment Payments under this Purchase and Use Agreement.

(j) The Board of Directors of the Corporation are appointed by South Carolina Association of Governmental Organizations, a South Carolina nonprofit public benefit corporation ("SCAGO"). By letter dated February 22, 2004, SCAGO was determined by the Internal Revenue Service to be an exempt organization within the meaning of Section 501(c)(3) of the Code and not a private foundation under Section 509(a) of the Code. The activities of the Corporation hereunder are not unrelated to the charitable purpose of SCAGO described to the Internal Revenue Service in its application for recognition of its exempt status. The Corporation intends to apply to the Internal Revenue Service for a determination that it is also an exempt organization within the meaning of Section 501(c)(3) of the Code and not a private foundation under Section 509(a) of the Code.

## **ARTICLE II**

### **INSTALLMENT SALE AND USE OF 2013 FACILITIES AND TERM HEREOF**

**SECTION 2.1. Installment Sale and Use of 2013 Facilities; Term.** The Corporation hereby agrees to sell the 2013 Facilities to the School District in accordance with the provisions hereof. On the date hereof, the Corporation holds fee title to the 2013 Facilities. Upon each payment of Base Payments, title to an undivided interest in the 2013 Facilities equal to that percentage of the Purchase Price represented by such payment will transfer from the Corporation to the School District without further action by either party hereto. Additionally, the Corporation shall make a deposit into the Reserve and Replacement Fund as provided in the 2013 Trust Agreement from each payment of Base Payments, to be used as provided therein.

Any prepayment of Base Payments which is used to redeem the Series 2013 Bonds will result in a recalculation of the Purchase Price to take account of such prepayment and, upon the making of such prepayment, the School District shall be credited with an undivided interest in the 2013 Facilities equal to that percentage of the total Purchase Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.

Subject to the provisions of Article VIII hereof, the School District shall have the exclusive right to occupy and use the 2013 Facilities during the term hereof. Subject to the provisions of Sections 2.2 and 2.3 hereof, this Purchase and Use Agreement shall be for a term beginning with the date of execution and delivery hereof, and ending on \_\_\_\_\_ 1, 20\_\_.

During the term hereof, the School District may permit other civic or charitable organizations or agencies of the State or any political subdivision thereof to use portions of the 2013 Facilities subject to the following limitations: (i) no agreement may be for a term in excess of one year; (ii) the 2013 Facilities shall not be used in any manner that interferes with the use of such property by the School District for the purposes for which it was designed or is then being used; (iii) any such agreement shall expressly terminate upon the occurrence of an Event of Default or an Event of Nonappropriation hereunder; and (iv) the School District shall monitor all such use to ensure continued compliance with the provisions of the Federal Tax Certificate relating to the Series 2013 Bonds and Section 5.3 hereof.

**SECTION 2.2. Termination.** The term of this Purchase and Use Agreement shall terminate upon the earliest of any of the following events:

(a) The occurrence of an Event of Nonappropriation (such occurrence to be determined in accordance with the definition of such term given in this Purchase and Use Agreement as provided in Section 4.7(a) hereof, or (ii) the July 31 following any July 1 on which the School District shall fail to specifically budget and appropriate moneys sufficient to pay the Installment Payments due hereunder during the Fiscal Year beginning on such July 1 pursuant to Article IV hereof (which Event of Nonappropriation is not thereafter duly waived);

(b) The purchase by the School District of the 2013 Facilities as provided in Article IX of this Purchase and Use Agreement;

(c) The occurrence of an Event of Default under and termination of this Purchase and Use Agreement by the Corporation or Trustee under Article VIII of this Purchase and Use Agreement; or

(d) \_\_\_\_\_ 1, 20\_\_\_\_, which date constitutes the last day of the term, or such later date as all Installment Payments due hereunder shall be paid.

Termination of the term of this Purchase and Use Agreement shall terminate all obligations of the School District under this Purchase and Use Agreement, including its obligations to pay future Installment Payments and other amounts that have not been appropriated (excluding, however, amounts payable under Section 2.3 hereof and other amounts specifically provided for herein), subject to identification as provided in Section 2.4 hereof, shall terminate the School District's rights of possession under this Purchase and Use Agreement of the Corporation Facilities (except to the extent of any conveyance pursuant to Article IX of this Purchase and Use Agreement); but all other provisions of this Purchase and Use Agreement, including all obligations of the Corporation with respect to the Holders of the Bonds and the receipt and disbursement of funds and all rights and remedies of the Corporation specifically provided herein, shall be continuing until the 2013 Trust Agreement is discharged as provided therein. Notwithstanding the foregoing, termination of the term of this Purchase and Use Agreement shall not impair the School District's rights as landlord or the Corporation's rights as tenant under the Base Lease, except as provided in the Base Lease.

**SECTION 2.3. Holdover Terms.** In the event the School District fails to deliver possession to the Corporation of the Corporation Facilities or any part thereof pursuant to Section 2.4 hereof, the School District shall be unconditionally liable for the payment of all Installment Payments, including Additional Payments, for successive six month periods commencing on the Bond Payment Date following the last due date of Base Payments hereunder until the School District delivers possession of the Corporation Facilities to the Corporation. The obligations of the School District under this Section 2.3 shall not in any manner constitute a pledge of the full faith, credit or taxing power of the School District within the meaning of any State constitutional or statutory provision.

**SECTION 2.4. Surrender of Possession Upon Termination; Partition of Undivided Interests.** Upon the occurrence of an Event of Default or an Event of Nonappropriation which results in termination hereof or upon termination of all rights of the School District hereunder and at the written direction of the \_\_\_\_\_, the Purchaser, the School District and the Corporation shall proceed to partition the 2013 Facilities so that the percentage of undivided interests in the title to the 2013 Facilities will be converted, to the extent feasible, into like percentages of title to entire Facilities Components in accordance with Exhibit E hereof and the following provisions. The date upon which the \_\_\_\_\_ gives such written direction shall be the "Partition Date".]

Division of 2013 Facilities. Within a reasonable time after the Partition Date, the \_\_\_\_\_ shall propose a division of 2013 Facilities. The \_\_\_\_\_ may in its sole discretion select a Partition Consultant to assist, consult with and make recommendations to the \_\_\_\_\_ in the division of the 2013 Facilities. The \_\_\_\_\_ and the Partition Consultant, if selected, shall endeavor, to the extent practicable, to allocate the 2013 Facilities between the School District

and the Corporation in a fair and equitable fashion taking into account the following factors: (1) entire Facilities Components, if possible, will be assigned to each of the School District and the Corporation; and (2) if portions of the 2013 Facilities and Facilities Components will be assigned to each of the Corporation and the School District, the \_\_\_\_\_ and the Partition Consultant, if selected, shall propose such partition as will, in the aggregate, best protect the interests of the Holders (subject to the provisions of this Section 2.4).

Valuation of Facilities Components and 2013 Facilities. For purposes of any partition, the 2013 Facilities are valued in the respective amounts as set forth on Exhibit E and the percentage of the 2013 Facilities being purchased on an annual basis are also set forth on Exhibit E hereof, each subject to adjustment as stated on Exhibit E. In allocating the 2013 Facilities to the percentage of undivided interests in the entire 2013 Facilities to be conveyed to the School District or retained by the Corporation, such values and percentages shall be used rather than the current market or other valuation of Facilities Components associated therewith.

Partial Divisions. In the event that the \_\_\_\_\_ and the Partition Consultant, if selected, are unable to devise a partition that results in complete Facilities Components being assigned to the School District or the Corporation, then such partition shall be made so as to provide the School District's and the Corporation's respective interests to be allocated to Facilities Components in a manner consistent with other provisions of this Section 2.4. The portion of a Facilities Component which is property allocated to the School District but is not a complete Facilities Component shall be designated as a "School District Partial Facilities Component." With respect to a School District Partial Facilities Component, the School District may (i) continue to occupy the entire Facilities Component which includes a School District Partial Facilities Component if it agrees to make payments (as specified in Section 2.3) in amounts to be determined by the \_\_\_\_\_ and the Partition Consultant, if selected, as the proper charge for use of the Corporation's interest in such Facilities Component (the "Corporation Partial Facilities Component"); (ii) purchase the Corporation's interest in such Corporation Partial Facilities Component by the payment of the amount determined by the \_\_\_\_\_ and the Partition Consultant, if selected; or (iii) cede occupancy rights in the School District Partial Facilities Component to the Corporation for the duration of the term of the Base Lease. In determining the purchase price if the School District elects to purchase the Corporation's interest in a Corporation Partial Facilities Component, \_\_\_\_\_ and the Partition Consultant, if selected, shall determine the prepayment amount that would be required under the second paragraph of Section 2.1 to result in a complete allocation of such Facilities Component to the School District. In setting the payments to be made by the School District if it chooses to continue to occupy the entire Facilities Component the Partition Consultant shall set a payment that is not less than the amount of total Base Payments allocable to such Facilities Component that would have been payable from and after the Partition Date if this Purchase and Use Agreement or the rights of the School District hereunder had not been terminated.

Partition Report; Finality. The \_\_\_\_\_ and the Partition Consultant, if selected, shall make a report regarding the division of the 2013 Facilities as soon as practicable after the Partition Date. In the discretion of the \_\_\_\_\_ the partition report shall be final and binding upon all parties.

Instruments of Conveyance. Within a reasonable time (but in no event later than 60 days) after the partition report becomes final, the School District and the Corporation shall exchange



deeds or other instruments vesting title to such of the 2013 Facilities as is required to effect such partition; provided, however, that any conveyance deed or other instrument made by the Corporation shall be made in the manner and subject to the conditions set forth in Section 9.2 hereof. Immediately thereafter, the School District shall deliver up or cause to be delivered up peaceable possession of the Corporation Facilities to the Corporation, together with the related portion of the 2013 Real Property, without delay, in good repair and operating condition, excepting reasonable wear and tear; provided, however, that in the event of a partial division, the terms relating to School District Partial Facilities Components described above shall control. Any Facilities Component delivered to the Corporation in connection with such partition shall remain, at all times, subject to the terms of the Base Lease.

### **ARTICLE III**

[Reserved]

### **ARTICLE IV**

#### **INSTALLMENT PAYMENTS; ASSIGNMENT TO TRUSTEE**

##### **SECTION 4.1. Installment Payments.**

(a) Installment Payments to Constitute a Current Expense of School District. The Corporation and the School District understand and intend that the obligation of the School District to pay Installment Payments hereunder shall constitute a current expense of the School District and are dependent upon lawful appropriations of funds being made by the Board of Trustees to pay Installment Payments due in each fiscal year hereunder, and shall not in any way be construed to be a debt of the School District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the School District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the School District.

(b) Payment of Base Payments. Subject to an Event of Nonappropriation as described in Section 4.7 hereof, on or before the 20th day prior to each Bond Payment Date during the period this Purchase and Use Agreement is in effect, the School District shall pay to the Trustee as assignee of the Corporation, Base Payments exclusively from moneys specifically budgeted and appropriated for such purpose in lawful money of the United States of America, which payments shall be made to the Trustee as assignee of this Purchase and Use Agreement, in the amounts set forth on Exhibit D hereto. Each payment of Base Payments shall be in consideration for the conveyance of title to an undivided interest in the 2013 Facilities as and to the extent provided in Section 2.1 hereof. As further consideration for the receipt of Base Payments, the School District shall be entitled to the use and occupancy of all of the 2013 Facilities during the applicable Fiscal Year in which such payments are or will be made.

(c) Payment of Additional Payments. The School District agrees to pay, subject to the provisions of Section 4.7 hereof, the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in Sections 4.2 and 4.4 hereof to the parties referred to therein;

(ii) [Upon receipt of written notice from the Trustee pursuant to Section 5.5(e) of the 2013 Trust Agreement of a transfer from a subaccount of the Reserve Account established for a particular series of Bonds (as defined in the 2013 Trust Agreement) to the applicable subaccount of the Facilities Purchase Account, within the period of time specified in Section 5.5(e) of the 2013 Trust Agreement, or payment to the Bond Insurer on any Reserve Surety of an amount equal to the amount so transferred from the applicable subaccount of the Reserve Account to the applicable subaccount of the Facilities Purchase Account;

(iii) Within the period of time specified in Section 5.5(e) and 5.7(i) of the 2013 Trust Agreement, the amount of moneys necessary to re-establish a subaccount of the Reserve Account established for a particular series of Bonds at the applicable Reserve Requirement as may be required pursuant to said Sections 5.5(e) and 5.7(i); and]

(iv) All reasonable costs and expenses incurred or to be paid by the Corporation or the Trustee, as the case may be, under the terms of this Purchase and Use Agreement or the 2013 Trust Agreement, including without limitation the amounts specified in Section 4.4 hereof.

The Corporation may, but shall be under no obligation to, advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the 2013 Facilities, (ii) for the discharge of mechanic's and other liens relating to the 2013 Facilities, (iii) to obtain and maintain insurance for the 2013 Facilities and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the School District fails to do so as required by this Purchase and Use Agreement or the Base Lease. As provided in Section 6.11 of the 2013 Trust Agreement, the Trustee may take any such action. Any such advances shall continue to be due as Additional Payments hereunder.

(d) Credits. The School District shall be entitled to a credit against payments of Base Payments in the amount of any deposits in the Bond Fund provided for in the 2013 Trust Agreement. In addition to the credit provided in the preceding sentence, the amount payable by the School District as Base Payments will be reduced by the amount of money in the applicable subaccount of the Facilities Purchase Account to be credited against those payments and representing Base Payments, including without limitation accrued interest on the Series 2013 Bonds to the extent such amounts will be used to make payments on the Series 2013 Bonds. In this connection, if applicable, when amounts remaining in a subaccount of the Reserve Account equal or exceed the remainder of the applicable Base Payments due, such amounts shall be transferred to the applicable subaccount of the Facilities Purchase Account as and when needed for payment of such Base Payments.

(e) Continuation of Term by School District. The School District has no reason to believe, as of the date hereof, that it will not continue making Installment Payments through the entire term of this Purchase and Use Agreement, and reasonably believes that it will pay the Installment Payments due or coming due hereunder in order to continue to use the 2013 Facilities and believes that it presently has legal authority to budget and appropriate such amounts in its annual budget. Subject to Section 4.7 hereof, so long as the School District has budgeted to make Installment Payments it covenants that it will utilize the authority to appropriate such amounts in its annual budget and levy ad valorem taxes to the extent so required; provided, however, that nothing herein shall be construed to limit the School District from providing funds from other

sources (including but not limited to the issuance of general obligation debt) to pay Base Payments and the covenant contained herein is subject to the ability of the School District to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof.

The School District further represents that it presently intends to maintain its capacity to issue general obligation debt that does not require voter approval, in amounts and at times sufficient to make all or a portion of the Base Payments when due. The representations and covenants contained herein are subject to the ability of the School District to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof.

**SECTION 4.2. Installment Payments Not Subject to Reduction, Offset or Other Credits.**

(a) The School District and the Corporation intend that this Purchase and Use Agreement shall yield, net, the Base Payments specified in Section 4.1 hereof during the term of this Purchase and Use Agreement, and that all costs, expenses, liabilities and obligations of any kind and nature whatsoever including, without limitation, any ad valorem taxes or other taxes levied against Holders of real or personal property, insurance premiums, utility charges and assessments and all operation, maintenance, repair and upkeep expenses relating to the 2013 Facilities and the use of the 2013 Facilities which do not constitute Base Payments, or other obligations relating to the 2013 Facilities which may arise or become due during the term of this Purchase and Use Agreement and which the Corporation except for this Purchase and Use Agreement or the terms of the Base Lease would ordinarily be required to pay as owner of the 2013 Facilities (regardless of whether the School District as owner would be so required to pay) shall either be paid under the provisions of the Base Lease or be included in the Installment Payments and paid by the School District as Additional Payments. The School District acknowledges that, under the provisions of the Base Lease, it has retained responsibility for the payment of taxes and insurance on the 2013 Facilities and the property associated therewith and the obligations of the School District under the Base Lease are not subject to the limitations of Section 4.6 hereof.

(b) All payments of Additional Payments referred to in Section 4.2(a) above shall be made by the School District in immediately available funds on a timely basis directly to the person or entity to which such payments are owed; provided, however, subject to the terms of the Security Documents, that the School District shall not be required to pay, discharge or remove any tax, lien, or assessment, or any mechanic's, laborer's or materialman's lien or encumbrance, or any other imposition or charge against the 2013 Facilities or any part thereof, or comply with any law, ordinance, order, rule, regulation or requirement, as long as the School District shall, after prior written notice to the Corporation and the Trustee, at the School District's expense, contest the same or the validity thereof in good faith, by action or inaction which shall operate to prevent the collection of the tax, lien, assessment, encumbrance, imposition or charge so contested, or the enforcement of such law, ordinance, order, rule, regulation or requirement, as the case may be, and the sale of the 2013 Facilities or any part thereof to satisfy the same or to enforce such compliance; provided further, that the School District shall have given reasonable security as may be demanded by the Corporation, the Trustee, or both, to insure such payment and prevent any sale or forfeiture of the 2013 Facilities or any part thereof by reason of such nonpayment or noncompliance.

**SECTION 4.3. Prepayment of Installment Payments.** The School District may prepay Installment Payments in whole or in part as provided in, and under the conditions prescribed under, Sections 7.3 and 9.1 hereof, or at any time that the School District so determines for the purpose of providing for the redemption of Series 2013 Bonds as provided in Section 4.1(a) of the 2013 Trust Agreement. The School District shall notify the Trustee in writing of the dates on which the Series 2013 Bonds corresponding to any prepayment hereunder are to be redeemed and the amount to be redeemed on each such date, all in accordance with the provisions of the 2013 Trust Agreement. The Trustee may request such reasonable information and reports as may be necessary to establish the sufficiency of the payments to be made at the time of such prepayment.

**SECTION 4.4. Administrative Expenses.** Subject to the provisions of Section 4.7 hereof, the School District shall pay as Additional Payments (i) the periodic fees and reasonable expenses from time to time of the Trustee and any Paying Agent incurred in administering the 2013 Trust Agreement and the Series 2013 Bonds, and (ii) any reasonable expenses, including reasonable attorneys' fees, incurred by the Corporation (including but not limited to Program Administrator Fees not otherwise paid from Base Payments) or the Trustee to compel full and punctual performance of this Purchase and Use Agreement in accordance with the terms hereof.

**SECTION 4.5. Assignment of Purchase and Use Agreement, Manner of Payment.** As security for and the source of payment of the Series 2013 Bonds, pursuant to the 2013 Trust Agreement, the Corporation has assigned to the Trustee all of its right, title and interest in and to this Purchase and Use Agreement, except for the right of the Corporation to receive indemnity against claims and payment of its fees and expenses pursuant to Sections 4.2, 4.4 and 5.5 hereof. The School District consents and agrees to the assignment of this Purchase and Use Agreement as provided herein. The School District covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Purchase and Use Agreement, and to make all payments required by the School District under this Purchase and Use Agreement (other than payment for indemnity and fees and expenses of the Corporation) directly to the Trustee, all without set-off, defense or counterclaim by reason of any dispute which the School District may have with the Corporation or the Trustee.

**SECTION 4.6. Limited and Special Obligation of School District.** UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION, THIS PURCHASE AND USE AGREEMENT MAY BE TERMINATED AS OF THE END OF THE LAST FISCAL YEAR WHICH IS NOT AFFECTED BY SUCH EVENT OF NONAPPROPRIATION, AND THE SCHOOL DISTRICT SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF THE INSTALLMENT PAYMENTS PROVIDED FOR IN THIS PURCHASE AND USE AGREEMENT BEYOND THE END OF SUCH FISCAL YEAR (EXCEPT AS OTHERWISE PROVIDED HEREIN). If this Purchase and Use Agreement is terminated under this Section 4.6 or as provided in Section 4.7 or Section 2.2, the School District agrees to peaceful delivery of that portion of the 2013 Facilities to be retained by the Corporation or its assigns as provided in Section 2.4 hereof.

The obligations of the School District to make Installment Payments required under this Article IV and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided

under this Purchase and Use Agreement. Notwithstanding any dispute involving the School District and any of the Corporation, any contractor, subcontractor, or supplier of materials or labor, or any other person, the School District shall make all Installment Payments when due and shall not withhold any Installment Payments pending final resolution of such dispute, nor shall the School District assert any defense or right of set-off, recoupment, or counterclaim against its obligation to make such payments required under this Purchase and Use Agreement. The School District's obligation to make Installment Payments during the term of this Purchase and Use Agreement shall not be abated through accident or unforeseen circumstances. The School District agrees not to suspend, reduce, abrogate, diminish, postpone, modify, discontinue, withhold, or abate any portion of the payments required pursuant to this Purchase and Use Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the 2013 Facilities, failure of the Corporation to complete the acquisition, construction, or installation of the 2013 Projects, failure of the School District to occupy or to use the 2013 Facilities as contemplated in this Purchase and Use Agreement or otherwise, any change or delay in the time of availability of the 2013 Facilities, any acts or circumstances which may impair or preclude the use or possession of the 2013 Facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the 2013 Facilities or in the suitability of the 2013 Facilities for the School District's purposes or needs, failure of consideration, the invalidity of any provision of this Purchase and Use Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the 2013 Facilities, the taking by eminent domain of title to or the use of all or any part of the 2013 Facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Purchase and Use Agreement. Nothing contained in this paragraph shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained. In the event the Corporation should fail to perform any such agreement on its part, the School District may institute such action against the Corporation as the School District may deem necessary to compel performance so long as such action does not abrogate the School District's obligations under this Purchase and Use Agreement. The School District may, however, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the School District deems reasonably necessary in order to secure or protect its right of possession, occupancy, and use under this Purchase and Use Agreement, and in such event the Corporation hereby agrees to cooperate fully with the School District and to take all action necessary to effect the substitution of the School District for the Corporation in any such action or proceeding if the School District shall so request. It is the intention of the parties that the payments required by this Purchase and Use Agreement will be paid in full when due without any delay or diminution whatsoever, **SUBJECT ONLY TO THE SPECIAL AND LIMITED NATURE OF THE SCHOOL DISTRICT'S OBLIGATION TO PAY INSTALLMENT PAYMENTS HEREUNDER AS SET FORTH ABOVE.**

**THE OBLIGATIONS OF THE SCHOOL DISTRICT UNDER THIS PURCHASE AND USE AGREEMENT SHALL NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF THE SCHOOL DISTRICT WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY PROVISION.**

**SECTION 4.7. Event of Nonappropriation.** Upon the occurrence of an Event of Nonappropriation, the following provisions shall apply:

(a) If the School District delivers official, specific written notice to the Corporation and the Trustee that it will not appropriate funds in the next succeeding Fiscal Year for payment of Installment Payments, the Trustee shall immediately give written notice to the School District and the Corporation stating that an Event of Nonappropriation has occurred; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.

(b) Subject to Article VIII hereof and the provisions of subsections (c) and (d) hereof, this Purchase and Use Agreement will be terminated pursuant to Section 2.2.

(c) Subject to Article VIII hereof and the provisions of subsection (d) hereof, the Corporation or the Trustee, with the prior written consent of the Purchaser, may waive any Event of Nonappropriation which is cured by the School District within a reasonable time if the Waiver Period has not expired and in the Trustee's judgment such waiver is in the best interest of the Holders of the Series 2013 Bonds.

(d) Subject to Article VIII hereof and notwithstanding the provisions of subsection (c) hereof, the Trustee shall waive any Event of Nonappropriation (but only an Event of Nonappropriation which occurs pursuant to clause (a) of the second paragraph of the definition thereof) which is cured by the School District's specifically budgeting and appropriating, prior to expiration of the Waiver Period, moneys sufficient to pay Installment Payments coming due hereunder for such Fiscal Year.

If an Event of Nonappropriation occurs and is not waived, the School District shall not be deemed to be in default under this Purchase and Use Agreement and shall not be obligated to make payment of any future Installment Payments due hereunder or any other payments provided for herein which accrue after the beginning of the Fiscal Year with respect to which there has occurred an Event of Nonappropriation; provided, however, that, subject to the limitations of Section 4.6 hereof and this Section 4.7, the School District shall continue to be liable for Installment Payments (a) accrued prior to the beginning of such Fiscal Year and due hereunder, and (b) allocable to any period during which the School District shall continue to occupy the Corporation Facilities.

The School District, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under Section 2.4 hereof and shall vacate and deliver over to the Trustee the Corporation Facilities by the later of (a) the expiration of the Fiscal Year during which an Event of Nonappropriation occurs if such Event of Nonappropriation occurs by specific written notice thereof or the September 16 following the September 15 on which the School District shall fail to specifically budget and appropriate sufficient moneys to pay, or adopt a Bond Resolution for the purpose of paying, the Base Payments hereunder or (b) when required by the last paragraph of Section 2.4 hereof.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the 2013 Trust Agreement for the benefit of the Holders of the Series 2013 Bonds. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, if such occurs by notice, or the September 16 following the September 15 on which the School District fails to specifically budget and appropriate sufficient moneys to pay, or adopt a resolution for the purpose of paying, the Installment Payments hereunder, the Trustee may or shall, as the case may be, proceed to exercise its remedies, liquidate its interest in this Purchase and Use Agreement or lease the 2013 Facilities as provided in Section 8.2 of this Purchase and Use Agreement, provided, however, that the Facilities shall always be operated for a civic or a public purpose as provided in Section 4.1 of the Base Lease to the extent such requirement continues to be applicable under State law. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Holders of the Bonds as set forth in the 2013 Trust Agreement.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees and expenses of the Trustee, and all other amounts which are payable hereunder, in excess of the principal amount of the Outstanding Series 2013 Bonds at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the School District by the Trustee, its assigns or its lessee.

## **ARTICLE V COVENANTS OF THE SCHOOL DISTRICT**

### **SECTION 5.1. Maintenance and Operation of 2013 Facilities; Transfers.**

(a) Subject to Sections 4.6 and 4.7 herein, the School District covenants and represents that during the term of this Purchase and Use Agreement, it shall, at its own cost or expense, operate the 2013 Facilities in a sound and economical manner, in compliance with all present and future laws and governmental regulations applicable thereto, and maintain, preserve and keep the 2013 Facilities in good repair, working order and condition, and that it shall from time to time make or cause to be made all necessary and proper repairs and renewals so that at all times the operation of the 2013 Facilities may be properly and advantageously conducted. This covenant shall not prevent the School District from discontinuing operation of the 2013 Facilities at any time.

(b) Except as otherwise provided in this Section 5.1 and Section 2.1 hereof, prior to payment of the Series 2013 Bonds in full, the School District shall not sell, transfer, lease, sublease or otherwise dispose of all or any portion of the 2013 Facilities, or its interests under this Purchase and Use Agreement, except to another school district, as defined under the laws of the State, which assumes in writing all obligations of the School District under this Purchase and Use Agreement and shall enter into no such transaction without the written consent of the Trustee and the Purchaser.

(c) Notwithstanding any other provision hereof to the contrary, the School District may provide for the exchange of any asset comprising the 2013 Facilities (the “Released Facility”) for another school district facility and the real estate on which such facility (the “Exchange Facility”) is located if: (i) the School District provides the Trustee an appraisal showing that the proposed Exchange Facility has a value equal to or greater than the proposed Released Facility; (ii) the School District certifies to the Trustee that the Exchange Facility is necessary or desirable to the operations of the School District and that the remaining useful life of the Exchange Facility is not less than the remaining useful life of the Released Facility; (iii) the School District certifies to the Trustee that the exchange is necessary to facilitate either the sale or other disposition of the Released Facility or the conversion of its use to another purpose other than use by the School District as a school facility; and (iv) the Trustee receives an opinion of Bond Counsel to the effect that the proposed exchange will not adversely affect the federal income tax treatment of interest paid to the Holders of the Series 2013 Bonds.

**SECTION 5.2. Liens on 2013 Facilities.** The School District shall not create, incur or suffer to exist any lien, charge or encumbrance on the 2013 Real Property or the 2013 Facilities or its rights under this Purchase and Use Agreement other than any Permitted Encumbrance.

**SECTION 5.3. Representations and Covenants Regarding Tax Exempt Status of Series 2013 Bonds.**

(a) Neither the Corporation nor the School District shall take any action (including but not limited to any use of the 2013 Facilities) or permit any action to be taken on its behalf, or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its expectation on the date of this Purchase and Use Agreement would cause the interest paid on the Series 2013 Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes.

(b) The School District covenants to the Corporation, the Trustee and the Holders of the Bonds that, notwithstanding any other provision of this Purchase and Use Agreement or any other instrument, it will neither make nor cause to be made any investment or other use of the proceeds of the Series 2013 Bonds or amounts on deposit in any of the funds or accounts held under the 2013 Trust Agreement or under any other document related to the Series 2013 Bonds which would cause the Series 2013 Bonds to be “arbitrage bonds” under Section 148 of the Code and the regulations thereunder, and that it will comply with the requirements of such Section and regulations throughout the term of the Series 2013 Bonds.

(c) The School District shall take all actions necessary on its part to enable compliance with the rebate provisions of Section 148(f) of the Code in order to preserve the federal income tax status of payments of interest with respect to the Series 2013 Bonds. The School District shall ensure that the Corporation retains a consultant experienced in the calculation and determination of rebate payments and liability under Section 148(f) of the Code to provide the reports required under the Tax Regulatory Agreement.

(d) The School District will accept title to the 2013 Facilities upon the discharge of the Series 2013 Bonds.



#### **SECTION 5.4. Reports and Opinions; Inspections.**

(a) The School District shall deliver to the Trustee and the Corporation, within 90 days after the end of each Fiscal Year a certificate stating that no Event of Default under this Purchase and Use Agreement has occurred and is continuing and that the 2013 Facilities are being used in accordance with the terms of this Purchase and Use Agreement.

(b) The School District shall permit the Corporation and the Trustee to examine, visit and inspect, at any reasonable time, the 2013 Facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Trustee or the Purchaser may reasonably require.

(c) The Corporation shall give the Purchaser prompt notice of any failure of the School District to make the payments required to be made pursuant to Section 4.1(b) when due.]

**SECTION 5.5. Immunity of Corporation and Trustee; Indemnification.** In the exercise of the powers of the Corporation and the Trustee and their members, directors, officers, employees and agents under the 2013 Trust Agreement or this Purchase and Use Agreement including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Corporation nor the Trustee shall be accountable to the School District for any action taken or omitted with respect to the 2013 Facilities or this Purchase and Use Agreement by either of them or their members, directors, officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred under this Purchase and Use Agreement. The Corporation and the Trustee and their members, officers, employees and agents shall be protected in its or their acting upon any paper or documents believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the School District for any claims based on the 2013 Trust Agreement or this Purchase and Use Agreement against any member, director, officer, employee or agent of the Corporation or the Trustee alleging personal liability on the part of such person. To the extent permitted by law, the School District shall defend the Corporation and any of its members, directors, officers, employees or agents and save them harmless against any liability, including expenses and legal or other fees, intended to be precluded by this Section 5.5 resulting from acts or omissions of the School District or from acts or omissions of the Corporation or any of their members, directors, officers, employees or agents in connection with any acts taken pursuant to this Purchase and Use Agreement, except for fraud, deceit, or acts taken in bad faith or which are negligent.

**SECTION 5.6. Compliance with Laws; Consolidation or Merger.** (a) With respect to the 2013 Facilities and any additions, alterations, or improvements thereto, the School District will at all times comply with all applicable requirements of federal and state laws and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that the School District shall be deemed in compliance with this Section 5.6 so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

(b) Nothing in this Purchase and Use Agreement shall be construed to prevent the School District from combining with one or more school districts (as defined under the laws of the State) not parties to this Purchase and Use Agreement to form a consolidated or a merged school district; provided that the consolidated or merged school district enters into a written supplement hereto, joined in by the Corporation, whereunder the consolidated or merged school district assumes payment of Installment Payments and all other obligations of the School District hereunder, thereupon such consolidated or merged school district shall replace and become the School District for all purposes of this Purchase and Use Agreement.

**SECTION 5.7. Insurance and Condemnation Proceeds.** The School District shall not make any disposition nor direct the disposition of insurance or condemnation payments with respect to the 2013 Facilities in excess of \$250,000 without the written consent of the Trustee except as may be required by the terms of the Security Documents or of any Permitted Encumbrances existing on the date hereof.

**SECTION 5.8. Filing of Budget with Trustee.** During the term of this Purchase and Use Agreement, the School District shall file with the Trustee, within 15 days after the beginning of each Fiscal Year, a copy of the annual budget of the School District for that Fiscal Year.

**SECTION 5.9. Alterations of the 2013 Facilities; Removals.** The School District, in its discretion and at its expense, may remodel or make such additions, modifications and improvements to the 2013 Facilities as it may deem to be desirable; provided, that no such additions, modifications or improvements shall adversely affect the structural integrity or strength of, or materially interfere with the use and operations of, the 2013 Facilities.

In this connection, the School District may remove any items of personal property constituting a part of the 2013 Facilities financed by a source of funds other than Bond Proceeds, provided that such removal of the personal property shall not materially diminish the value of the 2013 Facilities.

In the case of any removal as provided above or any removal of School District property not constituting 2013 Facilities, the School District shall repair any damage resulting from such removal

[SECTION 5.10. Continuing Disclosure. The School District covenants to provide the information required by Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“15c2-12”), as an Obligated Person (as defined in 15c2-12) in compliance with the provisions of the Continuing Disclosure Undertaking attached hereto as Exhibit F (the “Disclosure Undertaking”). In the event of a failure by the School District or any dissemination agent appointed thereby to comply with any provisions of the Disclosure Undertaking, the rights of the Holders of the Series 2013 Bonds to enforce the provisions of the Disclosure Undertaking shall be limited solely to a right, by action in mandamus or specific performance, to compel performance of the parties’ obligations under the Disclosure Undertaking.

Any failure by a party to perform in accordance with the Disclosure Undertaking shall not constitute a default on the Series 2013 Bonds or under any other document relating to the Series

2013 Bonds, and all rights and remedies shall be limited to those expressly stated in the Disclosure Undertaking.]

## **ARTICLE VI INSURANCE**

### **SECTION 6.1. Types of Insurance and Coverage Requirements.**

(a) The School District shall, commencing with the date that any items of personal property comprising the 2013 Facilities are delivered, or in the event that progress payments are to be made to the manufacturer thereof prior to the date of such delivery, commencing with the date of this Purchase and Use Agreement, and upon completion of any construction, reconstruction, renovation or remodeling incidental to the completion and installation of the 2013 Facilities, on all such improvements to the 2013 Facilities, maintain all-risk fire, extended coverage, vandalism, and malicious mischief insurance on the 2013 Facilities, with such deductible provisions as are acceptable to the Trustee (which is entitled to rely solely upon the Purchaser's approval). Such insurance shall (1) name the Corporation, the School District and the Trustee as loss payees or additional insureds, as their interests may appear, be maintained for the term of this Purchase and Use Agreement; (2) be in an amount equal to the replacement value of the 2013 Facilities; and (3) expressly waive any co-insurance penalty, and payment of proceeds of such policy shall not be contingent on the degree of damage sustained at other facilities owned by the School District; provided that, on the third anniversary of the execution of this Purchase and Use Agreement and every three years thereafter, the School District shall cause the preparation and pay for the expense of a certification of the maximum full insurable value of the 2013 Facilities by an independent insurance agent or a person or company knowledgeable in such matters and shall deliver the same to the Trustee and the Purchaser.

(b) The School District shall, to the extent required by law or good business practice, maintain for the term of this Purchase and Use Agreement, general liability insurance, worker's compensation insurance, disability insurance, and any other form of insurance, covering loss resulting from injury, sickness, disability or death of employees in amounts at least equal to those carried by institutions of similar size and nature.

(c) The School District shall maintain, for the term of this Purchase and Use Agreement, general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than \$800,000 per occurrence and not less than \$1,000,000 in the aggregate for claims made in any one year on account of injury of any one person, and \$250,000 for property damage per occurrence with an aggregate property damage limitation of not less than \$500,000, excluding liability imposed upon the School District by any applicable worker's compensation law. Such insurance shall name the Corporation, the School District and the Trustee as loss payees or additional insureds, as their interests may appear.

(d) All policies of insurance required hereunder shall be written by the South Carolina School Boards Insurance Trust, South Carolina Insurance Reserve Fund, companies rated not lower than "A" by A. M. Best Company or in one of the two highest rating categories by Standard and Poor's Credit Markets Services, a Division of The McGraw-Hill Companies, Inc. ("Standard and Poor's") and Moody's Investors Service, Inc. ("Moody's"), or by companies acceptable to the Trustee (which is entitled to rely solely on the Purchaser), in each case qualified to do business in the State and each policy shall provide at least 30 days prior written notice to the Corporation and the Trustee before such policy is canceled. The School District may provide any part or all of the insurance required hereby under the terms of a policy insuring other facilities or risks or any "blanket" policy. The School District covenants that it will take all action, or cause the same to be taken, which may be necessary to enable recovery under the aforesaid insurance policies.

(e) All policies of insurance required hereby shall be open to inspection by the Corporation, the Trustee and the Purchaser at all reasonable times. Certificates of insurance describing such policies shall be furnished by the School District to the Corporation, the Trustee and the Purchaser when such policies are required to be obtained by this Section 6.1 to the Corporation and the Trustee, and at least 10 days prior to the expiration of each of such policies. The School District shall certify that it is in compliance with the provisions hereof at or prior to the execution and delivery of this Purchase and Use Agreement. If any change shall be made in such insurance as to either amount or type of coverage, a description and notice of such change shall be furnished immediately to the Corporation, the Trustee and the Purchaser by the School District or it shall cause the same to be so furnished. In the event that the School District fails to maintain any insurance as provided in this Section, the Trustee may, upon such notice to the School District as is reasonable under the circumstances, procure and maintain such insurance at the expense of the School District (reimbursable as provided hereinbefore), but the Trustee shall not be under an obligation to do so.

**SECTION 6.2. Self-Insurance Approval.** If, at the time of execution of this Purchase and Use Agreement, the School District self-insures or at any time hereafter desires to self-insure to the extent permitted by law, the entry into such self-insurance program shall require the written approval of the Corporation, the Purchaser and the Trustee (acting at the direction of the Purchaser).

**ARTICLE VII**  
**DAMAGE, DESTRUCTION AND**  
**CONDEMNATION; USE OF NET PROCEEDS**

**SECTION 7.1. Damage, Destruction and Condemnation.** If, during the term of this Purchase and Use Agreement, (i) the 2013 Facilities or any portion thereof shall be destroyed (in whole or in part), or be damaged by fire or other casualty, or (ii) title to, or the temporary or permanent use of, the 2013 Facilities or any portion thereof or the estate of the School District or the Corporation in the 2013 Facilities or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or (iii) a material defect in construction or installation of the 2013 Facilities or any portion thereof shall become apparent, or (iv) title to or the use of all or any portion of the 2013 Facilities shall be lost by reason of a defect in title thereto, then the School District shall be obligated, subject to the option provided in Section 7.3 hereof and the provisions of Sections 4.6 and 4.7 hereof, to continue to pay the amounts specified as Installment Payments under this Purchase and Use Agreement.

**SECTION 7.2. Obligation to Repair or Replace the 2013 Facilities.** Subject to the provisions of Section 7.3 hereof, the School District, the Corporation and the Trustee shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards made available by reason of any occurrence described in Section 7.1 hereof, to be deposited as provided in Sections 3.5, 3.7 or 3.8, as the case may be, hereof prior to the Completion Date or, after the Completion Date, in a separate trust fund designated as the "Net Proceeds Fund" which the Trustee is hereby directed to establish in such event. Except as set forth in Section 7.3 hereof, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the 2013 Facilities by the School District upon receipt of requisitions acceptable to the Trustee signed by an authorized official of the School District stating with respect to each payment to be made: (i) the requisition number; (ii) the name and address of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; and (iv) that each obligation mentioned therein has been properly incurred, is properly payable from the Net Proceeds held in the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. In carrying out any of the provisions of this Section 7.2, the School District shall have all power and authority granted under Article III of this Purchase and Use Agreement; and the Trustee shall cooperate with the School District in the administration of such fund and shall not unreasonably withhold its approval of requisitions required by this Section 7.2. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be applied to any lawful and authorized purpose of the School District as directed in writing by the School District. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be included as part of the 2013 Facilities under this Purchase and Use Agreement and the 2013 Trust Agreement.

If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration,

modification, improvement or replacement of the 2013 Facilities referred to above, the School District shall be responsible, subject to the option contained in Section 7.3 hereof, for the completion of the work and the payment of any cost in excess of the amount of the Net Proceeds. In this connection, the School District agrees that, if by reason of any such insufficiency of the Net Proceeds, the School District shall make any payments pursuant to the provisions of this paragraph, the School District shall not be entitled to any reimbursement therefor from the Trustee or the Holders of the Bonds, nor shall the School District be entitled to any diminution of any Installment Payments payable under this Purchase and Use Agreement.

**SECTION 7.3. Discharge of Obligation to Repair or Replace the 2013 Facilities.** If, as a result of the occurrence of an event described in Section 7.1 hereof, (a) any part of the 2013 Facilities is totally destroyed or is damaged to such an extent that the rebuilding or repairing of such part of the 2013 Facilities would be impracticable, (b) there is discovered a material defect in the construction of the 2013 Facilities or any portion thereof that renders the 2013 Facilities or such portion unusable by the School District for its intended purposes, (c) all or substantially all of the 2013 Facilities relating to a particular building is taken by eminent domain or (d) the School District is deprived of the use of any part of the 2013 Facilities by reason of a defect in title thereto, the School District may elect to apply the Net Proceeds of applicable insurance policies, performance bonds or condemnation awards as a prepayment of Installment Payments and the discharge of its obligations with respect to Sections 7.1 and 7.2 hereof. Such an election may be made by written notice to the Corporation and the Trustee within 90 days of the occurrence of an event described in (a) through (d) above. Upon any such prepayment, the amount thereof shall be applied to redeem Series 2005 Bonds at the earliest practicable date pursuant to Section 4.1(b) of the Trust Agreement, the Purchase Price shall be recalculated to take account of such prepayment, title to the affected part of the 2013 Facilities shall be deemed transferred to the School District and in the event of any future partition under Section 2.4 hereof, such affected part of the 2013 Facilities shall be automatically assigned to the School District. If at any time the amount to be applied as a prepayment hereunder shall exceed the redemption price of all Series 2005 Bonds, all Series 2005 Bonds shall be redeemed, title to all the 2013 Facilities shall be transferred to the School District and any amounts not required for the redemption of the Series 2005 Bonds and payment of other expenses and amounts under the Trust Agreement shall be paid to the School District.

**SECTION 7.4. Cooperation of the Parties.** The Corporation, the School District and the Trustee shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 7.1 of this Purchase and Use Agreement, in making the Net Proceeds available in accordance with Section 7.2 or 7.3 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the 2013 Facilities or any portion thereof and in the enforcement of all warranties relating to the 2013 Facilities. The Corporation hereby designates the School District as its agent for the purpose of making collections under such policies, such amounts to be held in trust and applied in accordance herewith. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding with respect to the 2013 Facilities or any portion thereof without the written consent of the School District and the Trustee.

## **ARTICLE VIII DEFAULTS AND REMEDIES**

**SECTION 8.1. Events of Default.** Each of the following events is hereby defined as, and declared to be and shall constitute, an “Event of Default”:

(a) failure by the School District to make any payment required to be made pursuant to Section 4.1(b) hereof within five (5) days after the same is due (provided, however, that an Event of Nonappropriation shall not result in an Event of Default under this provision); or

(b) failure by the School District to timely comply with the provisions of Section 2.4 hereof relating to partition and vacating of 2013 Facilities at the times required; or

(c) failure by the School District to make any payment required to be made pursuant to Section 4.1(c), 4.2 or 4.4 hereof or under the provisions of the Base Lease within 10 days after the same is due; or

(d) failure by the School District to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Purchase and Use Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the School District by the Trustee or the Purchaser; or

(e) if any of the representations and warranties of the School District hereunder shall prove to be false or misleading in any material respect as of the date such representations and warranties were made; or

(f) the failure by the School District promptly to stay or lift any execution, garnishment or attachment of such consequence as will, in the reasonable judgment of the Trustee, materially impair its ability to carry out its obligations under this Purchase and Use Agreement (provided that the School District shall not be in default so long as it is diligently prosecuting a bona fide appeal from any such execution, garnishment or attachment); or

(g) if the School District shall (i) apply for or consent to the appointment of a receiver, trustee, or the like of the School District or of property of the School District, or (ii) admit in writing the inability of the School District to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code.

The foregoing provisions of this Section 8.1 are subject to the following provision: If, by reason of Force Majeure, the School District shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the School District contained in Articles IV and VI of this Purchase and Use Agreement, the School District shall not be deemed in default during the continuance of such inability. The School District agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes

preventing the School District from carrying out its agreement, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the School District.

**SECTION 8.2. Remedies.** Whenever any Event of Default referred to in Section 8.1 of this Purchase and Use Agreement shall have happened and be continuing, the Corporation (with written notice promptly given to the Trustee and the Purchaser) and the Trustee (at the written direction of the Purchaser while the Insurance Policy is in effect) may terminate the term of this Purchase and Use Agreement and shall give notice to the School District to vacate the Corporation Facilities within 31 days from the date of such notice. Whenever an Event of Nonappropriation shall be deemed to occur, the term of this Purchase and Use Agreement shall terminate pursuant to Section 2.2(a) and the School District shall vacate and deliver over to the Trustee possession of the Corporation Facilities by the time specified in the third paragraph of Section 4.7 hereof.

Subject to Section 14.01 of the Trust Agreement and the terms of the Base Lease, the Trustee may also (i) take whatever action at law or in equity which may appear necessary or desirable to enforce its rights in and to the 2013 Facilities under this Purchase and Use Agreement, the Security Documents and the Trust Agreement, subject, however, to the limitations set forth herein, and (ii) exercise all the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

In addition, the Trustee may, subject to Section 13.1 of the Trust Agreement, or at the direction of the Holders of the majority in aggregate principal amount of the Outstanding Bonds shall, without any further demand or notice, and subject to the terms of the Base Lease, including without limitation, the provisions in Section 4.1 of the Base Lease which provide that the Corporation Facilities shall always be operated for a civic or public purpose to the extent such requirement continues to be applicable under State law, take one or both of the following additional remedial steps:

- (i) The Trustee may liquidate its interest in this Purchase and Use Agreement or sell or assign its interest in the Base Lease; or
- (ii) The Trustee may relet or assign its rights to the Corporation Facilities under such terms and conditions as it deems appropriate for the benefit of the Holders of the Bonds.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, (1) in the event of a termination of the School District's interest in any portion of the 2013 Facilities and subsequent thereto the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including fees and expenses of the Trustee, and the payment in full of amounts owed to the Purchaser, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Default or Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the School District by the Trustee, its assigns or its lessee and (2) the Trustee shall not be permitted to sell, lease or otherwise dispose of any interest in the Corporation Facilities following an Event of



Nonappropriation until the Waiver Period has expired, unless such action is expressly subject to the rights of the Corporation, Trustee or the School District, as the case may be, to waive such Event of Nonappropriation.

**SECTION 8.3. Limitations on Remedies.** A judgment requiring a payment of money may be entered against the School District by reason of an Event of Default or Event of Nonappropriation only as to the School District's liabilities described in Section 10.1 of this Purchase and Use Agreement.

**SECTION 8.4. Cumulative Rights.** No remedy conferred upon or reserved to the Corporation or the Trustee by this Purchase and Use Agreement 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 Purchase and Use Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Corporation or the Trustee of any breach by the School District of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or failure by the Corporation or the Trustee to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised by the Corporation or the Trustee from time to time and as often as may be deemed expedient.

**SECTION 8.5. Discontinuance of Proceedings.** In case the Corporation or the Trustee shall have proceeded to enforce any right under this Purchase and Use Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Corporation or the Trustee, then and in every such case the School District, the Corporation and the Trustee shall be restored respectively to their several positions and rights hereunder and all rights, remedies and powers of the School District, the Corporation and the Trustee shall continue as though no such proceeding had been taken.

## **ARTICLE IX CONVEYANCE OF THE 2013 FACILITIES**

### **SECTION 9.1. Optional Purchase of the 2013 Facilities.**

(a) Purchase in Full. The School District is hereby granted the option to terminate this Purchase and Use Agreement and to purchase the Corporation's interest in the 2013 Facilities not theretofore acquired by the School District at any time upon payment by the School District of the then applicable Purchase Option Price; provided, however, that no such termination shall relieve the School District from its obligation to pay Administrative Expenses as provided in Section 4.4 hereof until the Series 2013 Bonds have been fully discharged and the 2013 Trust Agreement terminated. The School District shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such purchase or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such purchase, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee. Upon the payment of the Purchase Option Price, the Corporation shall transfer and convey all its remaining interest in the 2013 Facilities to the School District in the manner provided in Section 9.2 hereof.

(b) Partial Prepayment of Installment Payments and Purchase. From and after \_\_\_\_ 1, 20\_\_, the School District is also granted the option to prepay Installment Payments on the due date of any Base Payments hereunder for the purpose of having such prepayments credited towards the purchase price of the 2013 Facilities. The School District shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such prepayment or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such prepayment, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee.

**SECTION 9.2. Manner of Conveyance.** (a) Complete Conveyance. At the closing of any purchase or other conveyance of all of the 2013 Facilities pursuant to Section 9.1 (a) of this Purchase and Use Agreement, or at the conclusion of the term hereof by the payment of all amounts due hereunder, the Corporation and the Trustee shall execute and deliver to the School District all necessary documents assigning, transferring and conveying all interest to the 2013 Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the School District, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the 2013 Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the 2013 Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the 2013 Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the School District.

(b) Partial Conveyance Resulting from Partition. Upon any conveyance under Section 2.4 hereof, the Corporation and the Trustee shall execute and deliver to the School District all necessary documents assigning, transferring and conveying all interest in the School District Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement with respect to the School District Facilities and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the School District, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the 2013 Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the 2013 Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the 2013 Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the School District.

Neither the Trustee nor the Corporation shall be responsible for the recordation of any deed or other instrument for such purposes.

(c) Partial Conveyance Resulting from Prepayment. Any conveyance resulting from a partial prepayment under Section 9.1(b) hereof shall be made in the manner as all other conveyances with respect to payments on each Bond Payment Date.

## **ARTICLE X MISCELLANEOUS**

**SECTION 10.1. Limitation of Liability of the Corporation and the School District.** Notwithstanding any other provision of this Purchase and Use Agreement, in the event of any default by either the Corporation or the School District hereunder or under the 2013 Trust Agreement, any liability of the Corporation or the School District shall be enforceable only out of its interest in the Base Lease and under this Purchase and Use Agreement and the moneys to be paid by the School District through the later of the end of the Fiscal Year as to which Base Payments have been appropriated for or the conclusion of any holdover term as provided in Section 2.3 hereof, and there shall be no recourse for any claim based on this Purchase and Use Agreement, the 2013 Trust Agreement or the Bonds, against any other property of the Corporation or the School District or against any officer or employee, past, present or future, of the Corporation or the School District or any successor body as such, either directly or through the Corporation or the School District or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Corporation and the School District shall be limited to its interests in the Base Lease and interests under this Purchase and Use Agreement and the moneys to be paid by the School District hereunder through the later of the end of the Fiscal Year as to which Base Payments have been appropriated therefor or the conclusion of any holdover term as provided in Section 2.3 hereof, and the lien of any judgment shall be restricted thereto, and there shall be no other recourse by the School District against the Corporation or the Corporation against the School District or any of the property now or hereafter owned by it or either of them.

**SECTION 10.2. Surrender of Possession Upon Termination.** Upon termination hereof or upon termination of all rights of the School District hereunder, either by reason of an Event of Default or an Event of Nonappropriation, the School District covenants that it will deliver up or cause to be delivered up peaceable possession of such of the 2013 Facilities as are determined under Section 2.4 hereof to be Corporation Facilities together with the related portion of the 2005 Real Property without delay, upon demand made by the Corporation or the Trustee, in good repair and operating condition, excepting reasonable wear and tear and damage, injury or destruction by fire or other casualty which, under the terms hereof, shall not have been repaired, reconstructed or replaced.

**SECTION 10.3. Notices.** Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties hereto as follows:

If to the School District:

School District No. 5 of Spartanburg County, South Carolina  
Attn: District Superintendent  
100 North Danzler Road  
Duncan, South Carolina 29334

If to the Corporation:

SCAGO Educational Facilities Corporation for Spartanburg School District No. 5  
312 Water Mill Road  
Greer, South Carolina 29650

If to the Trustee:

Wells Fargo Bank, N.A.  
Attention: Corporate Trust Department  
7077 Bonneval Road, Suite 400  
Jacksonville, Florida 32216

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, or the School District to one or more of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

**SECTION 10.4. Assignments.** Except as expressly provided in the 2013 Trust Agreement, this Purchase and Use Agreement may not be assigned by either of the parties hereto without the written consent of the other party hereto and the written consent of the Trustee [and the Purchaser]. Except as provided in Section 8.2 hereof and the provisions of Articles VI and VII of the 2013 Trust Agreement, the Trustee shall not be permitted to further assign its interest in this Purchase and Use Agreement. Any assignment in contravention hereof shall be void.

**SECTION 10.5. Severability.** In case any provision of this Purchase and Use Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court or administrative body of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this Purchase and Use Agreement shall be construed as if such provision had never been contained herein.

**SECTION 10.6. Amendments.** The School District and the Corporation may, with the prior consent of the Trustee pursuant to Section 11.1 of the 2013 Trust Agreement but without the consent of the Holder of any Bond, enter into any amendments hereto at any time for any of the following purposes:

- (a) To cure any ambiguity, defect or omission herein or in any amendment hereto; or

(b) To grant to or confer upon the Corporation any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon it; or

(c) To add to the covenants and agreements of the School District herein contained, or to surrender any right or power herein reserved to or conferred upon the School District; or

(d) To increase the Base Payments hereunder to enable the School District to proceed to acquire and install additional assets in addition to the 2013 Facilities or modify the Base Payments hereunder in connection with the issuance of Additional Bonds under the Trust Agreement or the redemption, refunding or defeasance of a series of Bonds; or

(e) To reflect a change in applicable law; or

(f) To make any amendments required by Moody's or Standard and Poor's as a condition to rating the Series 2013 Bonds.

The School District and the Corporation may, with notice to but without the prior consent of the Trustee, and without the consent of the Holder of any Bond, enter into any amendments hereto at any time and from time to time (i) to add additional \_\_\_\_ Real Property (including after-acquired property) or Additional Real Property to the description in Exhibit B hereto or reduce the size of the Highway 358 Parcel (as defined in the Base Lease) described in Exhibit B hereto, consistent with amendments made pursuant to Section 3.1 of the Base Lease, (ii) under the conditions specified in Section 5.1(c) hereof, to delete \_\_\_\_ Real Property in connection with a substitution of other \_\_\_\_ Real Property, (iii) to release property from the description of the \_\_\_\_ Real Property described in Exhibit B hereto, consistent with a termination of the Base Lease pursuant to Section 3.6 of the Base Lease, or (iv) to revise the description of Permitted Encumbrances specified in Exhibit C hereto in connection with the foregoing amendments.

All other amendments must be approved, if and to the extent required by the 2013 Trust Agreement, by the Trustee, the Purchaser and the Holders of the Bonds.

All amendments to this Purchase and Use Agreement or to the Exhibits to this Purchase and Use Agreement shall require the prior written consent of the Purchaser.

**SECTION 10.7. Successors and Assigns.** All covenants, promises and agreements contained in this Purchase and Use Agreement by or on behalf of or for the benefit of the School District or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**SECTION 10.8. Applicable Law.** This Purchase and Use Agreement shall be governed by, and interpreted under, the laws of the State of South Carolina.

**SECTION 10.9. Recordation.** At the option of the Corporation this Purchase and Use Agreement or a short form and summary hereof may be recorded in appropriate official records.

WITNESS the due execution of this Purchase and Use Agreement as of the day and the year first mentioned above.

(SEAL)

SCHOOL DISTRICT NO. 5 OF SPARTANBURG  
COUNTY, SOUTH CAROLINA

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Trustees

\_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, Board of Trustees

(SEAL)

SCAGO EDUCATIONAL FACILITIES  
CORPORATION FOR SPARTANBURG  
SCHOOL DISTRICT NO. 5

\_\_\_\_\_

By: \_\_\_\_\_  
President

\_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

[illegible]

PERSONALLY appeared before me the undersigned witness, who, on oath says that (s)he saw School District No. 5 of Spartanburg County, South Carolina, by its duly authorized officers, sign, seal and as its act and deed, deliver the foregoing Installment Purchase and Use Agreement and that (s)he together with the other witness subscribed above, witnessed the execution thereof.

Witness

SWORN TO AND SUBSCRIBED BEFORE ME  
this \_\_\_\_ day of October, 2013.

Notary Public for South Carolina  
My Corporation Expires:\_\_\_\_\_

[illegible]

PERSONALLY appeared before me the undersigned witness, who, on oath says that (s)he saw SCAGO Educational Facilities Corporation for Spartanburg School District No. 5 by its duly authorized officer, sign, seal and as its act and deed, deliver the foregoing Installment Purchase and Use Agreement, and that (s)he together with the other witness subscribed above, witnessed the execution thereof.

SWORN TO AND SUBSCRIBED BEFORE ME  
this \_\_\_\_ day of October, 2013.

Notary Public for South Carolina  
My Corporation Expires: \_\_\_\_\_



## **EXHIBIT A**

### **\_\_\_\_\_ PROJECTS**

The proceeds of the \_\_\_\_\_ 2005 Bonds were applied to defray the costs of the following projects:

1. Construction and equipping of a new middle school at the Highway 358 site.
2. Construction and equipping of a new elementary school at the Highway 358 site.
3. Renovations and improvements to the existing D.R. Hill Middle School to be converted to a 9<sup>th</sup> grade academy.
4. Acquisition of real property and construction and equipping thereon of a new elementary school.
5. Construction and equipping of a Field House and Performing Arts Facility at James F. Byrnes High School.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF THE 2005 REAL PROPERTY**

All those pieces, parcels or lots of land excluding all improvements located or to be located thereon and being more particularly described as follows:

1. Parcel 1 – Highway 358 Parcel.

All that certain piece, parcel or tract of land, with all improvements thereon, lying and being situate in the County of Spartanburg, State of South Carolina, north of the corporate limits of the Town of Lyman, fronting on Goodjoin Road and Plemmons Road-Hampton Road, containing 112.29 acres, more or less, as shown upon survey and plat prepared for Spartanburg County School District No. 5 by Joe E. Mitchell, PLS dated May 7, 2002 and recorded in Plat Book 152 at Page 315, Register of Deeds Office for Spartanburg County. For a more particular description, reference is hereby made to the aforesaid plat.

This is the same property conveyed to Melba Blanton, Ronald Black, Randall Burrell, Frank E. Cook, Gerald O. Cook, James T. Corn, Jr., Joe D. Dickey, Debbie Ferguson Reese and Neil Wyss, collectively known as The Board of Trustees of Spartanburg School District Five, by deed of Florence B. West, dated and recorded May 13, 2002 in Deed Book 75-U at Page 211, Register of Deeds Office for Spartanburg County.

2. Parcel 2 – D.R. Hill Middle School Site. Located upon the below-described property is all of the D.R. Hill Middle School Building and its related facilities.

All that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, near the Town of Duncan, containing 25.15 acres, more or less, as shown upon survey and plat made for School District Five D.R. Hill Middle School, prepared by Blackwood Associates, Inc. dated August 30, 1995 and recorded in Plat Book 130 at Page 936, Register of Deeds Office for Spartanburg County. For a more particular description, reference is hereby made to the aforesaid plat.

This is a portion of the property conveyed to Trustees of Spartanburg County School District No. 5 by deed of Irene Gore Moore, dated October 4, 1968 and recorded October 11, 1968 in Deed Book 35-D at Page 169, Register of Deeds Office for Spartanburg County.

3. Parcel 3 - The School District's leasehold interest in the following described property during the term of the PFC Base Lease and the PFC Lease (as such terms are defined in the Base Lease), and the School District's fee simple interest in such property after the termination of the PFC Base Lease and the PFC Lease:

Field House property - All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as 1.115 acres, more or less, on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated December 8, 2005. For a more particular description, reference is hereby made to the aforesaid plat.

Performing Arts Center property – All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as 1.694 acres, more or

less, as survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated December 8, 2005. For a more particular description, reference is hereby made to the aforesaid plat.

This is a portion of the property conveyed to C.W. Howe, Gary Brockman, J.W. Gaston, Jr., Marshall Moore and W.M. Allison, as trustees of Spartanburg County School District No. 5 by deed of J. Cova Groce, as surviving trustee under the Will of Vera G. Cantrell, Deceased, dated September 21, 1950 and recorded October 17, 1950 in Deed Book 17-H at Page 513, and to C.W. Howe, Gary Brockman, J.W. Gaston, Jr., Marshall Moore and W.M. Allison, as trustees of Spartanburg County School District #5 by deed of Nolan Groce, Homer W. Groce, (Mrs.) Ruth Groce Verner and (Mrs.) Carolyn Groce Gresham, dated September 21, 1950 and recorded October 17, 1950 in Deed Book 17-H at Page 510, and to C.W. Howe, Gary Brockman, J.W. Gaston, Jr., Marshall Moore and W.M. Allison, as trustees of Spartanburg County School District #5, dated September 21, 1950 and recorded October 17, 1950 in Deed Book 17-H at Page 507, Register of Deeds Office for Spartanburg County.

4. Parcel 4 – Approximately 80 acres located on Abner Creek Road, to be acquired for future elementary school with proceeds of Series 2005 Bonds, described as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Spartanburg, and being designated as containing 77.69 acres, more or less, located off Gin House Road and Abner Creek Road, and being more particularly shown and designated on a plat entitled “Curtis C. Hipp” prepared by Mitchell Surveying dated April 2, 2002 and recorded in Plat Book 152 at Page 159, Register of Deeds Office for Spartanburg County. For a more particular description, reference is hereby made to the aforesaid plat.

ALSO, all that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Spartanburg, and being designated as containing 2 to 4 acres, more or less, as the corner of Abner Creek Road and Gin House Road. A survey of the property will be prepared to verify the exact amount of acreage being purchased.

These are the same properties being purchased by Spartanburg County School District Five from Clarence C. Hipp, a/k/a Curtis C. Hipp on or before January 31, 2006.

## **EXHIBIT B-1**

### **CONVEYED IMPROVEMENTS**

All existing improvements located on the 2005 Real Property.

## **EXHIBIT C**

### **PERMITTED ENCUMBRANCES**

1. Unrecorded easements, if any, above or below the surface, and any discrepancies or conflicts in boundary lines or shortage in area or encroachments which a correct survey or inspection of the premises would disclose.
2. Rights or claims of parties in possession.
3. Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at time of this opinion.
4. Sewerage charges from any municipal authority, public service district or private utility, not recorded in said Clerk's Office or Register of Deeds Office.
5. Water bills, not recorded in said Clerk's Office or Register of Deeds Office.
6. All laws, ordinances and governmental regulations (including but not limited to, truth in lending and consumer protection laws, building and zoning ordinances, floodway and flood plain determinations) restricting or regulating the character, use, dimensions or locations of any improvements now or hereafter erected on the land or prohibiting a separation in ownership or a reduction of such law, ordinance or governmental regulation or determination.
7. Judgments and proceedings filed only in the Federal Court.
8. Usual right-of-way and easement granted to Duke Power Company recorded in Deed Book 9-N at Page 820 and in Deed Book 14-T at Page 327, Register of Deeds Office for Spartanburg County.
9. Rights of the public and others entitled thereto to use that portion of the property lying within Goodjoin Road, Plemmons Road, Hampton Road and Morgan Road as shown on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated May 7, 2002 and recorded in Plat Book 152 at Page 315, Register of Deeds for Spartanburg County.
10. Subject to the rights of others in and to the bed and waters of the branches crossing the property as shown on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated May 7, 2002 and recorded in Plat Book 152 at Page 315, Register of Deeds for Spartanburg County.
11. Power line, ditch and fire hydrant affecting subject property as shown on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated May 7, 2002 and recorded in Plat Book 152 at Page 315, Register of Deeds for Spartanburg County.
12. Rights of the public and others entitled thereto to use that portion of the property lying within Abner Creek Road and Gin House Road as shown on survey prepared for Curtis C. Hipp by Mitchell

Surveying dated April 2, 2002 and recorded in Plat Book 152 at Page 159, Register of Deeds Office for Spartanburg County.

13. Subject to the rights of others in and to the bed and waters of the creek crossing the property as shown on survey prepared for Curtis C. Hipp by Mitchell Surveying dated April 2, 2002 and recorded in Plat Book 152 at Page 159, Register of Deeds Office for Spartanburg County.

14. Power line affecting subject property as shown on survey prepared for Curtis C. Hipp by Mitchell Surveying dated April 2, 2002 and recorded in Plat Book 152 at Page 159, Register of Deeds Office for Spartanburg County.

15. Ordinary rights-of-way granted to Duke Power Company as recorded in Deed Book 18-H at Page 216 and in Deed Book 26-S at Page 533, Register of Deeds Office for Spartanburg County.

16. Ordinary right-of-way granted to Laurens Electric Cooperative as recorded in Deed Book 51-V at Page 788, Register of Deeds Office for Spartanburg County.

17. Sanitary sewer line, manhole, catch basins, concrete sidewalks, power transformer, ticket building, underground power line, underground telephone line and chain link fence affecting subject property as shown on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated December 8, 2005. (Field House property)

18. Manholes, steps, wall, catch basin, concrete sidewalks, covered sidewalk and overhead power line affecting subject property as shown on survey prepared for Spartanburg County School District No. 5 by Mitchell Surveying dated December 8, 2005. (Performing Arts Center property)

19. Rights-of-ways granted to Duke Power Company as recorded in Deed Book 15-H at Page 75, Deed Book 19-K at Page 212, Deed Book 20-X at Page 552, Deed Book 21-Q at Page 186, Deed Book 38-N at Page 553, Deed Book 38-S at Page 364, Deed Book 54-T at Page 345, Deed Book 61-Y at Page 495, Deed Book 61-Y at Page 497 and in Deed Book 63-E at Page 74, Register of Deeds Office for Spartanburg County.

20. Sewer right-of-way granted to the Town of Duncan as recorded in Deed Book 36-J at Page 392, Register of Deeds Office for Spartanburg County.

21. Rights-of-way granted to Southern Bell Telephone and Telegraph Company as recorded in Deed Book 45-C at Page 797, Deed Book 45-E at Page 177 and in Deed Book 57-Y at Page 936, Register of Deeds Office for Spartanburg County.

22. Deed of right-of-way to Startex-Jackson-Wellford-Duncan Water District as recorded in Deed Book 48-D at Page 720 and in Deed Book 69-D at Page 129, Register of Deeds Office for Spartanburg County.

23. Right-of-way granted to the South Carolina Department of Transportation as recorded in Deed Book 59-N at Page 755, Register of Deeds Office for Spartanburg County.

24. Memorandum of Lease from School District No. 5 of Spartanburg County, South Carolina, as Lessor to Spartanburg County School District No. 5 Public Facilities Corporation, as Lessee, as recorded in Deed Book 63-H at Page 919, Register of Deeds Office for Spartanburg County.

25. Memorandum of Lease from Spartanburg County School District No. 5 Public Facilities Corporation, as Lessor to School District No. 5 of Spartanburg County, South Carolina, as Lessee, as recorded in Deed Book 63-H at Page 923, Register of Deeds Office for Spartanburg County.
26. Trust Agreement by Spartanburg County School District No. 5 Public Facilities Corporation to First Union National Bank of South Carolina, as Trustee conveying all interest in and to the Base Lease referred to in Deed Book 63-H at page 919 and Lease Agreement referred to in Deed Book 63-H at Page 923, as recorded in Deed Book 63-H at Page 928, Register of Deeds Office for Spartanburg County.
27. Assignment by Spartanburg County School District No. 5 Public Facilities Corporation to First Union National Bank of South Carolina of all its right, title and interest in and to the Base Lease referred to in Deed Book 63-H at Page 919 and the Lease Agreement referred to in Deed Book 63-H at Page 923, as recorded in Deed Book 63-J at Page 1, Register of Deeds Office for Spartanburg County.
28. Assignment by Spartanburg County School District No. 5 Public Facilities Corporation to MBIA Insurance Corporation all its right, title and interest in and to the Base Lease referred to in Deed Book 63-H at Page 919 and the Lease Agreement referred to in Deed Book 63-H at Page 923, as recorded in Deed Book 63-J at Page 6, Register of Deeds Office for Spartanburg County.
29. Trust Agreement by Spartanburg County School District No. 5 Public Facilities Corporation to Wachovia Bank, NA conveying all interest in and to the Base Lease referred to in Deed Book 63-H at Page 919 and Lease Agreement referred to in Deed Book 63-H at Page 923, as recorded in Deed Book 81-G at Page 598, Register of Deeds Office for Spartanburg County.
30. UCC Financing Statement to First Union National Bank of South Carolina, as Trustee filed on October 5, 1995 in UCC File No. 95-02135, assigned to First Union National Bank in UCC File No. 2000-1860, and continued by Continuation Statement filed September 13, 2000 in UCC File No. 2000-1861, Register of Deeds Office for Spartanburg County.
31. UCC Financing Statement to Wachovia Bank, N.A., as Trustee filed February 9, 2005 in UCC File No. 05-000057, Register of Deeds Office for Spartanburg County.
32. Base Lease dated as of September 1, 1995, as amended by an Amendment to Base Lease dated September 27, 2004, and as amended from time to time, between School District No. 5 of Spartanburg County, South Carolina (the "School District") and Spartanburg County School District No. 5 Public Facilities Corporation (the "PFC").
33. Lease Agreement dated as of September 1, 1995, as amended by an Amendment to Lease Agreement dated September 28, 2004, between the School District and the PFC.

## **EXHIBIT D**

### **BASE PAYMENTS SCHEDULE**

<b><u>Year</u></b>	<b><u>March 15,</u></b>	<b><u>September 15,</u></b>
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
20__		



## EXHIBIT E

### VALUATION OF 2013 FACILITIES\*

Name of School  
or Facility

Assigned Value as of Date of Execution and  
Delivery of Agreement\*

Year

Base Payments Allocated to  
Purchase Price

Percentage of [\_\_\_\_] Facilities  
Purchased\*

\*After the Completion Date and the filing of the Acceptance Certificate in accordance with Section 3.04 hereof, the assigned values of the 2013 Facilities and the percentages thereof being purchased shall be recalculated based upon final construction costs of the 2013 Facilities.

