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TRUST INDENTURE

dated as of October 11, 2023

among

BOKF, NA, as Trustee

and

New Mexico Public Schools Education Technology  
Assistance Foundation, LLC, as Lessor

and

Gadsden Independent School District No. 16, as Lessee

relating to

Education Technology General Obligation Lease-Purchase  
Certificates of Participation, Taxable Series 2023

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## TRUST INDENTURE

THIS TRUST INDENTURE, made and entered into as of October 11, 2023, (together with any amendments or supplements hereto, the "Indenture"), among BOKF, NA, Albuquerque, New Mexico, a national banking association organized under laws of the United States of America, as trustee ("Trustee"); the New Mexico Public Schools Education Technology Assistance Foundation, LLC, as lessor ("Lessor") under the Lease-Purchase Agreement, dated as of October 11, 2023 ("Lease"), by and between the Lessor and the Gadsden Independent School District No. 16, as lessee ("Lessee"); and the Lessee.

### WITNESSETH:

WHEREAS, pursuant to the Education Technology Equipment Act, NMSA 1978, §§ 6-15A-1 to 6-15A-17 ("Act"), the Lessee and the Lessor have entered into the aforesaid Lease whereby the Lessor has agreed to acquire certain Property (as defined herein) and to lease the Property to the Lessee, and the Lessee has agreed to lease, acquire, and purchase the Property in one or more installments from the Lessor; and

WHEREAS, for the purpose of obtaining the moneys required to be deposited by it with the Trustee for financing the acquisition and purchase of the Property, the Lessor proposes to assign and transfer to the Trustee certain of its rights under the Lease, and in consideration of such assignment and the execution of this Indenture, the Trustee has agreed to execute and deliver the Certificates (as defined herein), evidencing a proportionate interest in the Rent Payments (as defined herein) relating to Property, to provide the moneys required herein to be deposited by the Lessor.

### GRANTING CLAUSES

The Lessor, in consideration of the premises and the acceptance by the Trustee of the trust hereby created and of the purchase and acceptance of the Certificates by the owners thereof, and of the sum of one dollar (\$1.00), in lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of Rent Payments made in respect of the Lease and to secure the performance and observance by the Lessor of all the covenants and obligations expressed or implied herein and in the Certificates, does hereby grant, bargain, sell, convey, transfer, assign, and pledge unto the Trustee (to the extent of its legal capacity to hold the same for the purposes hereof), and its successors in trust and assigns forever:

### FIRST GRANTING CLAUSE

All right, title, and interest of the Lessor in the Lease, including all supplements thereto and extensions and renewals of the term thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive, and make receipt for the Rent Payments to be made by Lessee to Lessor with respect to the Lease and other sums of money payable or receivable under such Lease, whether payable as Rent

Payments thereunder or otherwise, to bring any actions and proceedings under such Lease or for the enforcement thereof, and to do any and all other things which the Lessor is or may become entitled to do under such Lease, provided that the assignment made by this clause will not impair or diminish any obligation of the Lessor under the provisions of such Lease.

## SECOND GRANTING CLAUSE

All right, title, and interest of the Lessor in all moneys and securities held from time to time by the Trustee in an Acquisition Fund and a Rent Payment Fund established for the benefit of the Certificates under the terms of this Indenture.

## THIRD GRANTING CLAUSE

Any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned, or transferred as and for additional security hereunder by the Lessor or by anyone in its behalf or with its written consent in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all and singular these rights, whether now owned or hereafter acquired, unto the Trustee and its respective successors in trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and ratable benefit, security and protection of all present and future owners of the Certificates issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise (except as herein expressly provided) of any of the Certificates over any of the other Certificates;

PROVIDED, HOWEVER, that if the Lessee, its successors, or assigns, will well and truly pay, or cause to be paid, the Rent Payments due or to become due under the Lease, at the times and in the manner mentioned in such Lease and this Indenture, and will cause the payments to be made into the Rent Payment Fund as required under the provisions hereof and in the Certificates, or will provide for the payment thereof, and will well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and the Certificates to be kept, performed and observed by it, and will pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted will cease and terminate with respect to such Certificates; otherwise, this Indenture is to remain in full force and effect with respect to such Certificates.

It is expressly declared that the Certificates issued and secured hereunder, is to be issued, authenticated, and delivered, and all said property, rights, and interests, including, without limitation, the amounts hereby assigned, are to be dealt with and disposed of pursuant to the terms and conditions hereinafter expressed.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereby agree as follows:

## ARTICLE I: DEFINITIONS

Section 1.01. Definitions. (a) Unless the context otherwise requires, the terms used in this Trust Indenture will have the same meanings as provided in the Lease; (b) In addition, unless the context otherwise requires, the terms defined in this subsection will, for all purposes of this Trust Indenture, have the meanings herein specified.

“Acquisition Costs” means, with respect to any item of the Property, the contract price paid or to be paid therefor upon acquisition or purchase thereof, in accordance with a purchase order or contract therefor. Acquisition Costs also include the administrative, engineering, legal, financial, and other costs incurred by the Lessee and the Lessor in connection with the acquisition, purchase or financing of the Property, including the Costs of Issuance and other costs financed from the proceeds of any installment delivery of the Certificates relating to such item to the extent permitted by the Act.

“Act” means the Education Technology Equipment Act, NMSA 1978, §§6-15A-1 to 6-15A-17.

“Acquisition Fund” means the fund or funds by that name established and held by the Trustee pursuant to Article III of the Trust Indenture.

“Business Day” means any day except a Saturday, Sunday, holiday or day on which banking institutions in the City of Albuquerque, New Mexico, or the city in which the designated corporate trust office of the Trustee or the Place of Payment is located are closed.

“Certificates” means the Certificates representing participation interests in the Rent Payments due under the Lease, styled "Education Technology General Obligation Lease-Purchase Certificates of Participation, Taxable Series 2023" issued, executed, and delivered in one or more installments pursuant hereto and referred to in the Lease as the Certificates.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Lessee or the Lessor relating to the financing of Property from the proceeds of the Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, legal fees and charges, financial and other professional consultant fees, premiums for bond insurance, costs of rating agencies or credit ratings, fees for execution, transportation and safekeeping of the Certificates and charges and fees in connection with the foregoing.

“Event of Default” means an event of default under the Lease, as defined in Section 8.1 thereof.

“Governmental Obligations” means direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Indenture” means this agreement entitled “Trust Indenture,” dated as of October 11, 2023, among the Trustee, the Lessor, and the Lessee, together with any amendments hereof or supplements hereto permitted to be made hereunder.

“Initial Purchaser” means the New Mexico State Treasurer's Office pursuant to a purchase agreement relating to the Certificates among the New Mexico State Treasurer's Office, the Trustee and the Lessee.

“Lease” means the Lease-Purchase Agreement, dated as of October 11, 2023, by and between Lessor and Lessee.

“Lessee” means the Gadsden Independent School District No. 16, a local school district under the laws of the State of New Mexico.

“Lessee Representative” means the Superintendent or the Chief Financial Officer of the Lessee or any other person authorized by the governing body of the Lessee to act on behalf of the Lessee under or with respect to the Lease.

“Lessor” means the New Mexico Public Schools Education Technology Assistance Foundation, LLC, a New Mexico not for profit limited liability corporation, and any successor thereto by merger, acquisition or otherwise.

“Lessor's Representative” means the Manager of the Lessor or any other person authorized by the Lessor to act on behalf of the Lessor under the Lease.

“Outstanding,” when used as of any particular time with respect to the Certificates, means all Certificates executed and delivered by the Trustee under this Indenture, except the following:

(a) Certificates theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Certificates for the payment of which funds or Governmental Obligations in the necessary amount will have theretofore been deposited with the Trustee (whether upon or prior to the maturity date of such Certificates) and in accordance with Section 14.02, hereof; and

(c) Certificates in lieu of or in exchange for which other Certificates will have been executed and delivered by the Trustee pursuant to Section 2.08 hereof.

“Owner” or “Certificates Owner” or “Owner of Certificates,” or any similar term, means the person in whose name such Certificates will be registered.



“Permitted Investments” means any investments authorized by State law for school districts.

“Place of Payment” means the corporate trust operations office of the Trustee located in Albuquerque, New Mexico.

“Property” means the education technology equipment described in the Lease defined as Taxable Property therein.

“Rebate Fund” means the fund by that name established and held by the trustee pursuant to Article VII hereof.

“Record Date” means the date upon which ownership of Certificates will be determined by reference to the Certificates register maintained by the Trustee for purposes of making an interest payment on such Certificates, which date will be the last business day of the month preceding a month in which interest payments are due with respect to the Certificates.

“Related Documents” means the Certificates, this Indenture, and the Lease.

“Rent Payments” means the payment or payments due from the Lessee to the Lessor in accordance with Section 4.4 of the Lease defined as a Rent Payment therein.

“Rent Payment Date” means the dates on which Rent Payments are due under the Lease as therein provided.

“Rent Payment Fund” means the fund by that name established and held by the Trustee pursuant to Article V hereof and referred to in the Lease as the Rent Payment Fund.

“Responsible Officer” when used with respect to the Trustee means the chair or vice chair of the board of directors of the Trustee, the chair or vice chair of the executive committee of said board, the president or any vice president, the secretary or any assistant secretary, the treasurer or any assistant treasurer, the cashier or any assistant cashier, any trust officer or assistant trust officer, the controller or any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

“State” means the State of New Mexico.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor thereto acting as Trustee pursuant hereto.

Section 1.02. Authorization. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution of this Indenture by the officers and persons signing it.

## ARTICLE II: THE CERTIFICATES OF PARTICIPATION

Section 2.01. Authorization. Upon the execution and delivery hereof, the Trustee is authorized to execute, and deliver to the purchaser, as provided in Section 14.13 hereof, a series of certificates of participation to be designated Education Technology General Obligation Lease Purchase Certificates of Participation, Taxable Series 2023, ("Certificates") in the aggregate principal amount of \$2,520,000, evidencing undivided ownership interests in the Rent Payments made under the Lease.

The installment is expected to be delivered on or about October 11, 2023, in the amount of \$2,520,000.

Section 2.02. Maturity and Interest Rates. The Certificates will be dated the day it is delivered and will bear interest from its date of delivery at the interest rate per annum reflected below and the principal shall be paid on October 12, 2023, in the amount reflected below:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2023	\$2,520,000	5.55122%

Section 2.03. Form of Certificates; Dates; Interest. The Certificates will be delivered as fully registered Certificates without a coupon. The Certificates will be numbered from R-1 and will be prepared substantially in the form of Exhibit A attached hereto, with such modifications as may be required. The Certificates may be printed, typed or otherwise, produced in physical form.

Interest will represent a corresponding portion of the Rent Payments designated as interest and coming due with respect to the six-month period preceding each interest payment date with respect to the Certificates. The proportionate share of the portion of Rent Payments so designated as interest with respect to any Certificates will be computed by multiplying the portion of Rent Payments designated as principal with respect to such Certificates by the rate of interest applicable to such Certificates. Interest will be calculated on the basis of a 360-day year of twelve 30-day months.

Interest with respect to the Certificates will be payable from the dated date thereof, unless the date of authentication is after the first Record Date, in which event such Certificates will bear interest from the interest payment date next preceding the date of authentication, unless the date of authentication is after any Record Date but on or before the next interest payment date, in which case such Certificates will bear interest from the next following interest payment date; provided, however, that if at the time of authentication of any Certificates, interest with respect thereto is in default, such Certificates will bear interest as of the interest payment date to which interest has previously been paid or made available for payment. Payment of interest with respect to the Certificates will be made to the person appearing on the registration books of the Trustee as the Owner thereof, such interest to be paid (i) by check or draft mailed on each

interest payment date to such Owner at his address as it appears on such registration books on the Record Date (as set forth in the Certificates) prior to each such interest payment date or (2) upon the written request of the Owner of the Certificates (determined as provided in clause (i)) in the principal amount of at least \$2,520,000, delivered to the Trustee on or before the Record Date prior to applicable interest payment date, by wire transfer to any designated account in the United States of America in an institution which has the wire service facilities of the Federal Reserve Bank.

Section 2.04. Forms. The form of the Certificates, the form of assignment, and the form of Trustee's Certificates of authentication and registration will be substantially in the form set forth in Exhibit A attached hereto.

Section 2.05. Execution. The Certificates will be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee. Only such Certificates as will bear thereon a Certificate of Authentication and Registration in the form described in Section 2.04, executed and dated by the Trustee, will be valid for any purpose or entitled to the benefits of the Indenture.

Section 2.06. Application of Proceeds. All proceeds, other than accrued interest, if any, received by the Trustee from the sale of any installment delivery of the Certificates will be deposited in the Acquisition Fund established pursuant to this Indenture. Accrued interest will be deposited into the Rent Payment Fund.

Section 2.07. Transfer and Exchanges.

(a) Transfer of Certificates. Any Certificates may, in accordance with its terms, be transferred upon the books required to be kept pursuant to the provisions of Section 2.11 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificates for transfer, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. The Trustee may charge the Lessee a reasonable sum for each new Certificate issued upon any transfer, and the Trustee may require the payment by the Certificates Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Certificate or Certificates will be surrendered for transfer, the Trustee will execute, authenticate and deliver a new Certificate or Certificates, for like aggregate principal amount and maturity.

No transfer of Certificates will be required to be made during the period commencing on the Record Date for the payment of interest on such Certificates and ending on the next interest payment date.

(b) Exchange of Certificates. The Certificates may be exchanged at the designated corporate trust operations office or other office of the Trustee designated by the Trustee for such purpose, for a like aggregate principal amount of the Certificates of other authorized

denominations of the same maturity. The Trustee may charge the Lessee a reasonable sum for each new Certificate issued upon any exchange, and the Trustee may require the payment by the Certificates Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

Section 2.08. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate becomes mutilated, the Trustee, at the expense of the Owner of such Certificate or Certificates, will execute and deliver a new Certificate, and of like tenor and maturity, in exchange and substitution of the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee will be canceled by the Trustee and a new Certificate of like principal, interest and maturity will be delivered to the owner requesting such new Certificate. If any Certificate is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and, if an indemnity satisfactory to the Trustee is given to the Trustee, then the Trustee, at the expense of the Certificates Owner, will execute and deliver a new Certificate, of such series, of like tenor and maturity, and numbered as the Trustee will determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Certificate delivered under this Section 2.08 and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.08. Any Certificate issued under the provisions of this Section 2.08 in lieu of any Certificate alleged to be lost, destroyed or stolen will be equally and proportionately entitled to the benefits of this Indenture with all other Certificates secured by this Indenture. The Trustee will not treat both the original Certificate and any duplicate Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and duplicate Certificates will be treated as one and the same.

If, after the delivery of such replacement Certificates, a bona fide purchaser of the original Certificates in lieu of which such replacement Certificates was issued, presents for payment or registration such original Certificates, the Trustee will be entitled to recover such replacement Certificates from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and will be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Trustee in connection therewith.

In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Certificates have become or is about to become due and payable, the Trustee in its discretion may, instead of issuing replacement Certificates, pay such Certificates.

Section 2.09. Payment. The principal with respect to the Certificates will be payable in lawful money of the United States of America at, and upon presentation of the Certificates to the designated corporate trust operations office of the Trustee or other office of the Trustee designated by the Trustee for such purpose.

Section 2.10. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Indenture to be signed or executed by the Certificates Owner may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owner in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of the Certificates will be sufficient for any purpose of this Indenture (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a Certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by any officer of a corporation or association or a member of a partnership on behalf of the corporation, association or partnership, the Certificates will also constitute sufficient proof of his authority.

(b) The fact of the holding of the Certificates by an Owner and the amount, the maturity and the numbers of such Certificates and the date of his holding the same may be proved by, and the Trustee may conclusively rely on, the entries on the registration book maintained by the Trustee pursuant to Section 2.11.

Nothing contained in this Article II will be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent to the Owner of any Certificates will bind every future Owner of the same Certificates in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

Section 2.11. Certificates Register. The Trustee will keep or cause to be kept, at its designated corporate trust operations office or other office of the Trustee designated by the Trustee sufficient books for the registration and transfer of the Certificates which will at all times be open to inspection by the Lessee and the Lessor; and, upon presentation for such purpose, the Trustee will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the books, Certificates as hereinbefore provided.

### **ARTICLE III: ACQUISITION FUND**

Section 3.01. Acquisition Fund. The Trustee will establish a special fund designated as the "Acquisition Fund" for the Certificates delivered hereunder; will keep such fund separate and apart from all other funds and moneys held by the Trustee; and will administer such fund as herein provided. The Acquisition Fund will be held and applied by the Trustee in accordance herewith.

Section 3.02. Purpose. Moneys in the Acquisition Fund will be expended for (a) the Acquisition Costs of the Property to be acquired with the proceeds of the Certificates and (b) the Costs of Issuance of the Certificates if the Lessee determines to pay Costs of Issuance from such fund.

Section 3.03. Deposit of Funds; Payment of Acquisition Costs. Except as may otherwise be provided by the Lease, there will be credited to the Acquisition Fund all proceeds of sale of the Certificates (except accrued interest, which will be deposited into the Rent Payment Fund) and any other funds from time to time deposited with the Trustee for such purposes. Moneys in the Acquisition Fund will be disbursed as follows:

(a) In the case of payment of Costs of Issuance for the Certificates, the Trustee will disburse moneys in the Acquisition Fund only upon a requisition signed by the Lessor Representative and bearing the consent of the Lessee setting forth the amounts to be disbursed for payment or reimbursement of the Costs of Issuance for the Certificates and the person or persons to whom such amounts are to be disbursed, and stating that the amounts to be disbursed are for Costs of Issuance for the Certificates properly chargeable to the Acquisition Fund.

(b) Except as may otherwise be provided by the Lease, in the case of any other Acquisition Costs, the Trustee will disburse moneys in the Acquisition Fund from time to time upon receipt by the Trustee of a Certificate of Acceptance signed by the Lessor Representative and Lessee Representative in substantially the form of Exhibit C to the Lease.

The Trustee will be responsible for the safekeeping of the moneys held in such Acquisition Fund in accordance with the terms of this Indenture and the payment of such moneys in accordance with this Section 3.03 and Section 3.3 of the Lease.

The Trustee is entitled to reasonably rely in good faith upon the requisition provided for above, and it shall have no liability on account of disbursements from the Construction Account made in accordance with Article III. The Trustee shall not be responsible to collect lien waivers.

Section 3.04. Transfers of Unexpended Proceeds. Upon the later of (a) the filing with the Trustee of the final Certificate of Acceptance as indicated on the Certificates pursuant to Section 3.4 of the Lease, or (b) the acquisition of the Property through a Certificate of Acceptance, the Trustee will withdraw all remaining moneys in the Acquisition Fund (other than any moneys, if any, retained therein at the direction of the Lessee Representative to pay Acquisition Costs not then due and payable) and deposit such moneys in the Rent Payment Fund to be applied, at the written direction of the Lessee Representative with the written consent of the Lessor's Representative, which direction shall be filed with the Trustee, to pay any portion of any Rent Payments relating to Property acquired with the proceeds of the Certificates thereafter coming due.

## **ARTICLE IV: NO REDEMPTION OF CERTIFICATES**

Section 4.01. No Redemption. The Certificates are not subject to redemption prior to maturity.

## **ARTICLE V: RENT PAYMENTS; RENT PAYMENT FUND**

Section 5.01. Assignment of Rights in Lease. Lessor hereby assigns to the Trustee the Lessor's rights to receive and collect all of the Rent Payments under the Lease, and all other amounts required to be deposited pursuant to the Lease or pursuant hereto in the Rent Payment Fund established and held in trust for the benefit of the Owners of the Certificates. All such Rent Payments, and such other amounts to which the Lessor may at any time be entitled will be paid directly to the Trustee, and Lessee hereby agrees to make such payments directly to the Trustee, and all Rent Payments collected or received by the Lessor will be deemed to be held and to have been collected or received by the Lessor as the agent of the Trustee, and if received by the Lessor at any time will be deposited by the Lessor with the Trustee within one business day after the receipt thereof, and all such Rent Payments, and such other amounts will be forthwith deposited by the Trustee upon the receipt thereof in the Rent Payment Fund.

Section 5.02. Establishment of Rent Payment Fund. The Trustee will establish a special fund designated as the "Rent Payment Fund" for the Certificates. All moneys at any time deposited by the Trustee in the Rent Payment Fund will be held by the Trustee in trust for the benefit of the Owners of such Certificates. So long as the Certificates are Outstanding, neither the Lessee nor the Lessor will have any beneficial right or interest in the Rent Payment Fund or the moneys deposited therein, except only as provided in this Indenture, and such moneys will be used and applied by the Trustee as set forth herein.

Section 5.03. Deposits. There will be deposited in the Rent Payment Fund all Rent Payments received by the Trustee relating to the Certificates and the related Property, including any moneys received by the Trustee for deposit therein pursuant to Sections 3.4, 4.4 or Articles VIII or IX of the Lease and any other moneys required to be deposited therein pursuant to the Lease or pursuant to this Indenture.

Section 5.04. Application of Moneys. All amounts in the Rent Payment Fund will be used and withdrawn by the Trustee solely for the purpose of paying the components of principal of, premium, if any, and interest relating to the Certificates as the same will become due and payable, in accordance with the provisions of Article II hereof, and then, to the extent that the Lessee does not pay the additional rent described in Section 4.7 of the Lease, for the payment of such additional rent.

Section 5.05. Surplus. Any surplus remaining in the Rent Payment Fund, after payment of the Certificates, including premiums and accrued interest (if any), and payment of any applicable fees to the Trustee, or provision for such payment having been made to the satisfaction of the Trustee, will, upon receiving indemnification satisfactory to the Trustee, be withdrawn by the Trustee and remitted to the Lessee.

**ARTICLE VI: RESERVED**

**ARTICLE VII: RESERVED**

**ARTICLE VIII: MONEYS IN FUNDS; INVESTMENT**

Section 8.01. Held in Trust. The moneys and investments held by the Trustee in the Rent Payment Fund and the Acquisition Fund established under this Indenture are irrevocably held in trust for the benefit of the Owners of the Certificates, and for the purposes herein specified, and such moneys, and any income or interest earned thereon, will be expended only as provided in this Indenture, and will not be subject to levy or attachment or lien by or for the benefit of any creditor of either the Lessor, the Trustee or the Lessee or any Owner of the Certificates, or any of them.

Section 8.02. Investments Authorized. Moneys held by the Trustee hereunder will be invested and reinvested by the Trustee in Permitted Investments only upon receipt of (i) written instructions from the Lessee Representative, or (ii) telephone instructions, confirmed in writing, specifying the investments to be made. Such investments will be registered in the name of the Trustee for the benefit of the Certificates Owners and held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section VIII. Such investments and reinvestments will be made giving full consideration for the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. The Trustee may assume that each Permitted Investment is permitted by applicable law and will not be required to make any investigation with respect thereto. The Lessor and the Lessee acknowledge that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant Lessor or Lessee the right to receive brokerage confirmations of security transactions as they occur, they specifically waive receipt of such confirmations. All investment purchases and sales will be reported in Trustee's periodic statements.

The Trustee may, and upon the written request of the Lessee Representative will, commingle any of the funds held by it pursuant to this Indenture into a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the Trustee hereunder will be accounted for separately notwithstanding such commingling by the Trustee.

Section 8.03. Disposition of Investments. Any income, profit or loss on the investment of moneys held by the Trustee hereunder will be credited to the respective fund for which it is held.



Section 8.04. Trustee Not Responsible. The Trustee will furnish the Lessor and the Lessee, no less than annually with an accounting of all investments made by the Trustee. The Trustee will not be liable or responsible for any loss resulting from any such investment; except that the Trustee will be liable for (i) any loss resulting from its willful or negligent failure, within a reasonable time after receiving the direction, confirmed in writing, from the Lessee Representative to make, redeem or sell any investment in the manner provided for herein, and (ii) for any loss resulting from the making, redeeming or selling of any investment which was not authorized by the Lessee Representative or, subject to Section 8.02 hereof, was not a Permitted Investment at the time of its purchase. If the Trustee is unable, after reasonable effort and within a reasonable time, to make, redeem or sell any such investment, it will so notify in writing the Lessor Representative and thereafter the Trustee will be relieved of all responsibility with respect thereto.

Section 8.05. Valuation and Disposition of Investments. For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund will be valued at market value. The value of any investment will be calculated as of the end of each month. The Trustee may sell at a commercially reasonable price, or present for redemption, any Permitted Investment so purchased by the Trustee whenever it will be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee will not be liable or responsible for any loss resulting from such investment.

## **ARTICLE IX: THE TRUSTEE**

Section 9.01. Appointment of Trustee. BOKF, NA, Albuquerque, New Mexico, is hereby appointed Trustee by the Lessor for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use, invest and apply the same as provided in this Indenture. The Trustee will also serve as paying agent and registrar for the Certificates. The Lessor agrees that it will maintain a Trustee with a combined capital and surplus of at least twenty-five million dollars (\$25,000,000), and subject to supervision or examination by Federal or state banking authority, so long as the Certificates are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority referred to above for the purpose of this Section 9.01, the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee will cease to be eligible in accordance with the provisions of this Section, it will resign in the manner and with the effect specified in this Article, provided no Trustee may resign until a successor has been appointed and accepted the duties of the Trustee in accordance with the terms of this Article IX.

The Trustee is hereby authorized to redeem the Certificates when duly presented for payment at maturity and to cancel the Certificates upon payment thereof. The Trustee will keep accurate records of all funds administered by it and of the Certificates paid and discharged. The Trustee will be compensated for its services rendered pursuant to the provisions of this Indenture.

The Lessor may remove the Trustee initially appointed, and any successor thereto, and the Lessor may appoint a successor or successors thereto; provided that any such successor will be a bank or trust company meeting the requirement set forth in this Section 9.01.

The Trustee may at any time resign by giving written notice to the Lessor and the Lessee. Upon receiving such notice of resignation, the Lessor will promptly appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon acceptance of appointment by the successor Trustee. Upon such acceptance, the Lessor will notify the predecessor trustee in writing of such acceptance and will give the Certificates Owners notice thereof by mail. Furthermore, in the event that no appointment of a successor Trustee will be made by the Lessor within 30 days after the Trustee gives written notice of resignation or the Trustee is removed, any retiring Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it will deem proper, prescribe or appoint a successor Trustee.

#### Section 9.02. Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default of which the Trustee has notice or actual knowledge pursuant to the provisions of this Indenture:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Certificates or opinions furnished to the Trustee pursuant to the requirements of this Indenture.

(b) In case an Event of Default of which the Trustee has notice or actual knowledge hereunder has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture will be construed to relieve the Trustee from liability for its own gross negligence or willful misconduct, except that:

(i) this Subsection will not be construed to limit the effect of subsection (a) of this Section 9.02;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it will be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in principal amount of the Outstanding Certificates, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(d) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee will be subject to the provisions of this Section 9.02.

**Section 9.03. Liability of Trustee.** The recitals of facts, covenants and agreements herein and in the Certificates will be taken as statements, covenants and agreements of the Lessor and the Lessee (except with respect to the Certificates, as to which the Lessee makes no covenants or agreements), and the Trustee assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Indenture or of the Certificates nor will incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Certificates assigned to or imposed upon the Trustee. The Trustee will not be responsible or accountable for the disposition, use or application of the Certificates authenticated and delivered in accordance with this Indenture or the proceeds thereof, or for the disposition, use or application of any monies disbursed by the Trustee in accordance with the provisions of this Indenture. The Trustee makes no representations and shall have no responsibility for any official statement or other offering material prepared or distributed with respect to the Certificates. The permissive rights of the Trustee shall not, unless otherwise indicated herein, be construed as duties.

**Section 9.04. Merger or Consolidation.** Any company into which the Trustee may be merged, converted, or reorganized, or with which it may be consolidated, or any company resulting from any merger, conversion, reorganization, or consolidation to which it will be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company will be eligible under Section 9.01, will be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Section 9.05. Protection and Rights of the Trustee.** The Trustee will be protected and will incur no liability in acting or proceeding in good faith upon any opinion, resolution, notice, telegram, instructions, facsimile transmission, electronic mail request, consent, waiver, Certificates, statement, affidavit, voucher, bond, requisition or other paper or document which it will in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Lease, and the Trustee will be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept

and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee will not be bound to recognize any person as an Owner of the Certificates or to take any action at his request unless such Certificates will be deposited with the Trustee or satisfactory evidence of the ownership of such Certificates will be furnished to the Trustee. The Trustee may consult with counsel, who may be counsel to the Lessee or the Lessor, and accountants with regard to legal or accounting questions, and the opinion of such counsel or accountants will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith in reliance thereon. The Trustee will not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its gross negligence or willful misconduct.

The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions, the Lessor or Lessee, as applicable, will forthwith send to the Trustee, the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions will be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Lessor and Lessee will, provide on the Closing Date, a current incumbency Certificates containing the specimen signature of such designated person and updates of such incumbency Certificates, as needed.

Whenever, in the administration of its duties under this Indenture, the Trustee will deem it necessary or desirable that a matter be proved or established prior to its taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) will be deemed to be conclusively proved and established by a Certificates of the Lessee Representative or the Lessor Representative and such Certificates will be full warranty to the Trustee for any action taken or suffered by it under the provisions of this Indenture upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as may seem reasonable to it.

The Trustee may become the Owner of the Certificates with the same rights it would have if it were not Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the Lessee or the Lessor with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of the Certificates, whether or not such committee will represent the Owners of the majority in principal amount of the Certificates then Outstanding.

Section 9.06. Additional Rights of the Trustee. Except as otherwise provided in Section 9.02:

(a) the Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Owners of the Certificates unless such Owners will have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities including attorneys' fees which might be incurred by it in compliance with such request or direction;

(b) the Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, Certificates, statement, instrument, opinion, report, notice, request, direction, consent, order, instructions, requisition, facsimile transmission, electronic mail or other paper or document received by the Trustee; provided, however, in its discretion the Trustee may make such investigation;

(c) the Trustee may execute any of the trust or other powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, may in all cases pay such reasonable compensation as it will deem proper to such agents and attorneys as may reasonably be required and employed or retained, and will not be liable for any negligence or willful misconduct on the part of any attorney or agent not affiliated with the Trustee employed or retained by it with due care;

(d) the Trustee will not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture;

(e) no personal recourse may be taken, directly or indirectly, against any incorporator, officer, director, agent or employee of the Trustee, the Lessor or the Lessee or any predecessor of either of them, with respect to the obligations of the Trustee, the Lessor or the Lessee under this Indenture or any Certificates or other writing delivered in connection herewith;

(f) the Trustee will be under no liability for interest on any monies received by it hereunder except as may otherwise be agreed in writing with the Lessor;

(g) the Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture will extend to the Trustee's officers, directors, employees and agents;

(h) the Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture and the Lease will survive the Trustee's resignation or removal and the final payment of the Certificates; and

(i) the Trustee will not be deemed to have knowledge of any Event of Default, except that occurring under Section 8.1(a) of the Lease, unless a Responsible Officer in the corporate trust department has actually received notice of such default in writing from a Lessee Representative, Lessor's Representative, or Owner of the Certificates, specifying such default and referencing this Indenture.

Section 9.07. Compensation, Reimbursement and Indemnification. The Lessee agrees:

(a) to pay, within 30 days of receipt of an invoice from the Trustee, to the Trustee, from time to time, reasonable compensation in accordance with Trustee's schedule of fees, as agreed to from time to time by Lessee and Trustee, for all services rendered by it hereunder, which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust;

(b) except as otherwise provided herein, to promptly reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, including the reasonable compensation and the expenses and disbursements of its agents and counsel, except any such expense, disbursement or advance as may be attributable to the Trustee's gross negligence or willful misconduct;

(c) subject to the limitations and exceptions in the New Mexico Tort claims Act, NMSA 1978, §§ 41-4-1 to 41-4-27, and to the extent it otherwise lawfully may, Lessee will indemnify, defend and hold the Trustee harmless against any loss, liability or expense including reasonable attorneys' fees incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder; and

(d) Trustee's fees and expenses as compensation for the performance of its duties as paying agent under the terms of this Indenture shall be as follows:

Acceptance Fee:	\$500.00
Annual Fee:	500.00
NMGRT @ 7.75%	<u>77.50</u>
	\$1,077.50

## ARTICLE X: MODIFICATION OR AMENDMENT OF AGREEMENTS

Section 10.01. Amendments Permitted. This Indenture, with respect to the rights and obligations of the Owners of the Certificates, and the Lease and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement which will become effective when the written consents of the Owners of sixty percent (60%) in aggregate principal amount of the Certificates then Outstanding, will have been filed with the Trustee. No such modification or amendment will (a) extend or have the effect of extending the fixed maturity of the Certificates or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the redemption thereof, without the express consent of the Owner of such Certificates, (b) reduce or have the effect of reducing the percentage of the Certificates required for the affirmative vote or written consent to an amendment or modification of the Lease, or (c) modify any of the rights or obligations of the Trustee without its prior written assent thereto. Any such supplemental agreement will become effective as provided in Section 10.02.

This Indenture with respect to the rights and obligations of the Owners of the Certificates, and the Lease and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement, without the consent of any such Owners, but only to the extent permitted by law, and only (a) to cure, correct or supplement any ambiguous or defective provision contained herein or therein in a manner not inconsistent with the terms hereof or thereof or (b) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which will not adversely affect the interest of the Owners of such Certificates. Any such supplemental agreement will become effective upon execution and delivery by the parties hereto or thereto as the case may be.

Section 10.02. Procedure for Amendment with Written Consent of Certificates Owners. This Indenture, with respect to the rights and obligations of the Owners of the Certificates, or the Lease, may be amended by supplemental indenture as provided in this Section 10.02 in the event the consent of the Owners of such Certificates is received if required pursuant to Section 10.01. A copy of such supplemental indenture, together with a request to such Certificates Owners for their consent thereto, will be mailed by the Trustee to the Owner of any Certificates at its address as it appears on the registration books maintained by the Trustee and to the Lessee, but failure to mail copies of such supplemental indenture and request will not affect the validity of the supplemental indenture when assented to as in this Section provided. Notice of the fact of the adoption of such supplemental indenture (stating that a copy thereof is available for inspection at the office of the Trustee) will be mailed to the Owner of each Certificates stating in substance that such supplemental indenture has been consented to by the Owners of the required percentage of the Certificates and will be effective as provided in this Section (but failure to mail copies of such notice will not affect the validity of such supplemental indenture or consents thereto).

Such supplemental indenture will not become effective unless there will be filed with the Trustee the written consents of the Owners of sixty percent (60%) in aggregate principal amount of the Certificates then Outstanding and a notice will have been given as hereinafter in this Section provided. Each such consent will be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof will be such as is permitted by Section 10.01. Any such consent will be binding upon the Owner of the Certificates giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

A record, consisting of the papers required by this Section 10.02 to be filed with the Trustee, will be proof of the matters therein stated until the contrary is proved. Such supplemental indenture will become effective upon the mailing of the notice of adoption by the Trustee, and such supplemental indenture will thereafter be conclusively binding upon the parties hereto and the Owners of the Certificates.

Section 10.03. Effect of Supplemental Indenture. From and after the time any supplemental indenture becomes effective pursuant to this Article X, this Indenture, or the Lease, as the case may be, will be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of the affected Certificates Outstanding, as the case may be, will thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental indenture will be deemed to be part of the terms and conditions of this Indenture with respect to the Certificates or the Lease, as the case may be, for any and all purposes.

With regard to any modification, amendment or supplement of the Related Documents, the Trustee shall receive and may conclusively rely upon an opinion of Special Counsel that such modification, amendment or supplement: (a) is authorized or permitted by the Related Documents; (b) that all conditions precedent thereto have been complied with or waived; and (c) if the consent of the Certificates Owners is not sought for such modification, amendment or supplement, that such modification, amendment or supplement will not adversely affect the interests of the Certificates Owners.

Section 10.04. Endorsement or Replacement of Certificates Delivered After Amendments. The Lessor may determine that Certificates delivered after the effective date of any action taken as provided in this Article X will bear a notation, by endorsement or otherwise, in form approved by the Lessor, as to such action. In that case, upon demand of the Owner of any affected Certificates Outstanding at such effective date and presentation of his or her Certificates for the purpose at the office of the Trustee, a suitable notation will be made on such Certificates. New Certificates, so modified as in the opinion of the Lessor is necessary to conform to such Certificates Owners' action, will be prepared, executed and delivered. In that case, upon demand of the Owner of any Certificates then Outstanding, such new Certificates



will be exchanged in the designated office of the Trustee, without cost to such Owner, for Certificates of the same character then Outstanding, upon surrender of such Certificates.

## **ARTICLE XI: COVENANTS; NOTICES**

Section 11.01. Compliance With and Enforcement of Lease. The Lessor covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it under the Lease.

The Lessor will not do or permit anything to be done, or omit to refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Lease by the Lessee thereunder.

Section 11.02. Further Assurances. The Lessor will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for better assuring and confirming unto the Owners of the Certificates the rights and benefits provided herein.

## **ARTICLE XII: LIMITATION OF LIABILITY**

Section 12.01. No Liability of the Lessor for Trustee Performance. The Lessor will not have any obligation or liability to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon the Trustee under this Indenture.

Section 12.02. Limited Liability of Trustee. The Trustee will have no obligation or responsibility for providing information to the Owners concerning the investment character of the Certificates, for the sufficiency or collection of any Rent Payments or other moneys required to be paid to it under the Lease, or for the actions or representations of the Lessee or the Lessor. The Trustee will have no obligation or liability to any of the other parties or the Owners of the Certificates with respect to this Indenture or the failure or refusal of any other party to perform any covenant or agreement made by any of them under this Indenture or the Lease, but will be responsible solely for the performance of the duties expressly imposed upon it hereunder. The recitals of acts, covenants and agreements contained herein, in the Lease and in the Certificates will be taken as statements, covenants and agreements of the Lessee or the Lessor (as the case may be), and the Trustee assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Indenture or of the Certificates or of the sufficiency of any security or the priority of any lien, nor will the Trustee incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Certificates assigned to or imposed upon it. The Trustee will not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct.

Section 12.03. Opinion of Counsel. Before being required to take any action, the Trustee may require an opinion of Special Counsel acceptable to the Trustee, which opinion will be made available to the Lessor or the Lessee upon request, which counsel may be counsel to the Lessor or the Lessee, or a verified Certificates of the Lessor or the Lessee, or both, concerning the proposed action.

Section 12.04. Limitation of Rights to Parties and Certificates Owners. Nothing in this Indenture or in the Certificates expressed or implied is intended or will be construed to give any person other than the Lessee, the Lessor, the Trustee and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and will be for the sole and exclusive benefit of the Lessee, the Lessor, the Trustee and such Owners.

### **ARTICLE XIII: EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATES OWNERS**

Section 13.01. Assignment of Rights. The Lessor hereby transfers, assigns and sets over to the Trustee certain of the Lessor's rights under the Lease, including without limitation the Lessor's rights to exercise such rights and remedies conferred on the Lessor pursuant to the Lease as may be necessary or convenient (a) to enforce payment of Rent Payments to be made under the Lease, and any other amounts required to be deposited in a Rent Payment Fund, or (b) otherwise to protect the interests of the Lessor or the Trustee in an Event of Default.

Section 13.02. Remedies. If an Event of Default will happen, then, and in each and every case during the continuance of such Event of Default, the Trustee may exercise any and all remedies available pursuant to law or granted to the Lessor pursuant to the Lease.

Section 13.03. Application of Funds. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article XIII or of Article VIII of the Lease will be applied by the Trustee in the following order upon presentation of the Certificates, only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the reasonable fees, costs and expenses due to the Trustee including reasonable compensation to its or their agents, attorneys and counsel;

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates for interest, and in case such moneys will be insufficient to pay in full the whole amount of interest so owing and unpaid with respect to the Certificates, then to the payment of such interest, ratably to the aggregate amount of such interest then owing;

Third, to the payment of the whole amount then owing and unpaid with respect to the Certificates or principal, and in case such moneys will be insufficient to pay in full the whole amount of principal so owing and unpaid with respect to the Certificates, then to the payment of such principal ratably to the aggregate amount of such principal then owing; and

Fourth, remaining amounts will be paid over to the Lessee.

Section 13.04. Institution of Legal Proceedings. If one or more Events of Default will happen and be continuing with respect to the Lease, the Trustee in its discretion may, and upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding and upon being indemnified to its satisfaction therefor, will, proceed to protect or enforce its rights or the rights of the Owners of the Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee will deem most effectual in support of any of their rights or duties hereunder.

Section 13.05. Non-waiver. No delay or omission of the Trustee or of any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default will impair any such right or power or will be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XIII to the Trustee or to the Owners of the Certificates may be exercised from time to time and as often as will be deemed expedient by the Trustee or the Certificates Owners.

Section 13.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Certificates Owners is intended to be exclusive of any other remedy, and every such remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

Section 13.07. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, will have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion, or upon the request of the Owners of a majority in principal amount of the Certificates then Outstanding, it will have full power in the exercise of its discretion for the best interests of the Owners of such Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee will not, unless there no longer continues an Event of Default hereunder, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of at least a majority in principal amount of the Certificates Outstanding hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Section 13.08. Limitation on Certificates Owners' Right to Sue. No Owner of the Certificates issued hereunder will have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner will have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Owners of at least a majority in aggregate principal amount of all the Certificates then outstanding will have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) such Owners will have tendered to the Trustee satisfactory indemnity against the costs, expense and

liabilities to be incurred in compliance with such request; and (d) the Trustee will have refused or omitted to comply with such request for a period of 60 days after such written request, will have been received by, and such tender of indemnity will have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of the Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of the Certificates will have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default will be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

The right of any Owner of the Certificates to receive payment of such Owner's proportionate interest in the Rent Payments as the same become due, or to institute suit for the enforcement of such payment, will not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section 13.08 or any other provision of this Indenture.

#### **ARTICLE XIV: MISCELLANEOUS**

Section 14.01. Filing. The Lessor will be responsible for the filing of any supplemental instruments or documents of further assurance as may be required by law in order to perfect the security interests created by this Indenture and will hold all financing documents and transfer the same, as required by the provisions of this Indenture. The Trustee will have no responsibility for the registration, filing, recording, re-registration, re-recording or re-filing of this Indenture, the Lease or other document necessary or permitted in connection with perfection of the security interests created by this Indenture or otherwise, but may, in the absence of appropriate action by the Lessor, make filings to continue security filings relating to the security interests created hereby.

Section 14.02. Defeasance. If the Outstanding Certificates will be paid and discharged in any one or more of the following ways:

(a) by well and truly paying or causing to be paid all Trustee fees and expenses due and owing and the principal of, premium, if any, and interest with respect to the Outstanding Certificates, as and when the same become due and payable; or

(b) by well and truly paying or causing to be paid all Trustee Fees and expenses to become due and owing (or making proper arrangements to pay such fees and expenses) to the reasonable satisfaction of the Trustee and depositing with the Trustee, in trust, an amount (including amounts then on deposit in the Rent Payment Fund) which, together with the amount of earnings calculated to accrue on any investment of the amounts in Governmental Obligations to maturity or applicable redemption date, will be sufficient to pay and discharge the Certificates (including all principal, interest and redemption premiums) at their respective maturity dates;

then, at the election of the Lessor, and notwithstanding that the Certificates will not have been surrendered for payment, all obligations of the Lessor and the Trustee under this Indenture with respect to the Outstanding Certificates will cease and terminate, except only the obligation of the Trustee to pay or cause to be paid to the Owners of the Certificates not so surrendered and paid all sums due thereon. Notice of such election will be filed with the Trustee.

Section 14.03. Records. The Trustee will keep complete and accurate records of all moneys received and disbursed under this Indenture, which will upon reasonable notice to the Trustee be available for inspection by the Lessee, the Lessor, or the agent of them, at any time during regular business hours.

Section 14.04. Notices. All written notices to be given under this Indenture will be given by mail to the party entitled thereto at its address set forth in the attached Exhibit B, or at such address as the party may provide to the other party in writing from time to time. Notice may be given in writing by United States mail, by overnight delivery, delivery in person, by telecopy (immediately confirmed in writing of return receipt registered mail) or by facsimile, and will be effective upon receipt.

Section 14.05. Governing Law. This Indenture will be construed and governed in accordance with the laws of the State.

Section 14.06. Binding Effect; Successors. This Indenture will be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Indenture either the Lessor, the Lessee or the Trustee is named or referred to, such reference will be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Lessor, the Lessee or the Trustee will bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 14.07. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same agreement.

Section 14.08. Cancellation of Certificates. Whenever in this Indenture provision is made for the surrender to or cancellation by the Trustee and the delivery to the Lessor of the Certificates, the Trustee will cancel such Certificates and retain the same in accordance with its document retention policies.

Section 14.09. Headings. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, will be solely for convenience of reference and will not affect the meaning, construction or effect of this Indenture. All references herein to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture unless specific reference is made to another instrument or document; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

Section 14.10. Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 14.11. Severability of Invalid Provisions. In case any one or more of the provisions contained in this Indenture or in the Certificates will for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Indenture, and this Indenture will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Indenture and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 14.12. Holiday Payments or Actions. Unless otherwise provided herein, if the date for making any payment or the last date for the performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made, act performed or right exercised on the next succeeding Business Day, with the same force and effect as if made or done on the nominal date provided therefor, and, with respect to any payment so made, no interest will accrue for the period between such nominal date and the date of payment.

Section 14.13 Lessor and Lessee. Whenever under the provisions of this Lease the approval of the Lessor or the Lessee is required, or the Lessor or the Lessee is required to take some action at the request of the other, such approval or such request shall be given for the Lessor by a Lessor Representative and for the Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 14.14. Sale of Certificates. The Certificates are hereby initially sold and will be delivered to the Initial Purchaser pursuant to the purchase agreement relating to the Certificates among the Initial Purchaser, the Lessee and the Trustee, for cash for the par value thereof. It is hereby officially found, determined, and declared that the terms of the sale of the Certificates are the most advantageous reasonably obtainable.

IN WITNESS WHEREOF, the parties have executed this Indenture as of the date and year first above written.

BOKF, N.A., as Trustee

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

Name: Cindy Mitchell

Title: Assistant Vice President & Trust Officer

THE NEW MEXICO PUBLIC SCHOOLS EDUCATION  
TECHNOLOGY ASSISTANCE FOUNDATION, LLC,  
as Lessor

By: \_\_\_\_\_  
Jacquelyn Archuleta-Staehlin  
Title: Manager

GADSDEN INDEPENDENT SCHOOL DISTRICT NO. 16,  
as Lessee

(SEAL)

By: \_\_\_\_\_  
Title: President, Board of Education

Attest:

By: \_\_\_\_\_  
Title: Secretary, Board of Education



EXHIBIT A  
(FORM OF CERTIFICATE OF PARTICIPATION)

NUMBER  
R-\_\_\_\_\_

PRINCIPAL AMOUNT  
\$2,520,000

EDUCATION TECHNOLOGY GENERAL OBLIGATION LEASE-PURCHASE  
CERTIFICATES OF PARTICIPATION  
TAXABLE SERIES 2023

Evidencing a Proportionate Interest of the Registered Owner  
Hereof in Certain Rent Payments to be Made by the

Gadsden Independent School District No. 16, as Lessee  
to

The New Mexico Public Schools Education Technology Assistance Foundation, LLC,  
as Lessor

and assigned to

BOKF, N.A., as Trustee

INTEREST RATE

MATURITY DATE:

DATED DATE:

5.551%

October 12, 2023

October 11, 2023

REGISTERED OWNER: NEW MEXICO STATE TREASURER'S OFFICE

PRINCIPAL AMOUNT: TWO MILLION EIGHT HUNDRED FIFTEEN THOUSAND DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, of the Certificates of Participation ("Certificates" ) is the owner of an undivided percentage interest in the right to receive certain Rent Payments thereof, if any, under that certain Lease-Purchase Agreement ("Lease"), dated as of October 11, 2023, by and between the New Mexico Public Schools Education Technology Assistance Foundation, LLC ("Lessor") and the Gadsden Independent School District No. 16 ("Lessee"), a municipal school district under the laws of the State of New Mexico, which Rent Payments, if any, and certain other rights and interests of the Lessor under the Lease have been assigned to BOKF, NA, as trustee ("Trustee").

The Registered Owner of the Certificates is entitled to receive, subject to the terms of the Lease, the principal amount specified above on the Maturity Date specified above, with such principal amount representing a portion of the Rent Payments designated as principal coming due on such date, and to receive on October 11, 2023, the Registered Owner's proportionate share of the Rent Payments designated as interest coming due during the preceding six months. Such proportionate share of the portion of the Rent Payments designated as interest is the result of the multiplication of the aforesaid portion of the Rent Payments designated as principal by the Interest Rate specified above. Interest will be payable from the dated date hereof, except that if

the date of authentication of the Certificates is later than the first Record Date (hereinafter defined) the Certificates will bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case the Certificates will bear interest from such next following interest payment date; provided, however, that if at the time of authentication of the Certificates interest with respect hereto is in default, interest on the Certificates will be payable from the last interest payment date to which interest has been paid or made available for payment. Such amounts are payable in lawful money of the United States of America (i) by check or draft mailed by the Trustee to the Registered Owner hereof at his address as it appears on each interest payment date on the registration books of the Trustee on the last business day of the month prior to each such interest payment date ("Record Date") or (2) upon the written request of the Owner of any Certificates (determined as provided in clause (i)) in the principal amount of at least \$2,520,000, delivered to the Trustee on or before the Record Date prior to applicable interest payment date, by wire transfer to any designated account in the United States of America in an institution which has the wire service facilities of the Federal Reserve Bank.

The Certificates have been executed and delivered by the Trustee pursuant to the terms of a Trust Indenture among the Trustee, the Lessor and the Lessee, dated as of October 11, 2023 ("Trust Indenture"). Reference is hereby made to the Lease and the Trust Indenture (copies of which are on file with the Trustee) for a description of the terms on which the Certificates of this series is delivered, the rights thereunder of the Registered Owners of the Certificates of this series and the rights, duties and immunities of the Trustee and the Lessor under the Trust Indenture and the rights and obligations of the Lessor and the Lessee under the Lease, to all of the provisions of which Lease and Trust Indenture the Registered Owner of the Certificates, by acceptance hereof, assents and agrees.

To secure the obligation of the Lessee under the Lease, the Lessee has covenanted that it will levy, or caused to be levied, ad valorem property taxes in an amount sufficient to provide for the payment of the Rent Payments, which provide funds for the payment of the interest on and principal of the Certificates, as such interest and principal come due, have been levied by the Lessee and ordered to be levied against all taxable property in the Lessee, and have been pledged for such payment, without limit as to rate or amount, provided, however, that the Lessee is not directly obligated to make payments to the Registered Owner of the Certificates, and the Registered Owner hereof will not have recourse to any property of the Lessee, but the payment of principal and interest on the Certificates is dependent upon receipt by the Trustee of the Rent Payments, if any, from the Lessee pursuant to the Lessor's assignment of such Rent Payments to the Trustee and the enforcement by the Trustee of Lessor's rights upon an event of default under the Lease, which rights have also been assigned to the Trustee by the Lessor.

The Certificates will not be subject to redemption prior to their stated maturities.

To the extent and in the manner permitted by the terms of the Trust Indenture, the provisions of the Trust Indenture may be amended by the parties thereto with the written consent of the holders of at least sixty percent (60%) in aggregate principal amount of the Certificates of this series then outstanding, and may be amended without such consent under certain circumstances but in no event such that the interests of the holders of the Certificates of this series are adversely affected, provided that no such amendment will impair the right of any Registered Owner to receive in any case such Registered Owner's proportionate share of any

Rent Payment thereof, if any, in accordance with such Registered Owner's Certificates without such Registered Owner's express consent.

The Certificates are transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Indenture and upon surrender and cancellation of the Certificates. Upon such transfer, a new Certificates or Certificates of authorized denominations for the same aggregate principal amount, will be issued to the transferee in exchange hereof. The Lessor and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not the Certificates will be overdue, and the Lessor and the Trustee will not be affected by any notice to the contrary.

The Trustee has no obligation or liability to the owners of the Certificates to make payment of principal, premium if any, or interest with respect to the Certificates except from amounts on deposit for such purpose with the Trustee. The Trustee's sole responsibilities are to administer for the benefit of the holders of the Certificates the various funds and accounts established under the Trust Indenture, and to perform the other duties expressly imposed upon it under the Trust Indenture.

The Certificates will not be entitled to any benefit under the Trust Indenture or become valid for any purpose until the Certificates of authentication and registration of the Trustee endorsed hereon will have been signed by the Trustee.

IN WITNESS WHEREOF, the Certificates have been executed and delivered by BOKF, NA, as Trustee, acting pursuant to the Trust Indenture.

BOKF, NA, as Trustee

By: \_\_\_\_\_  
Authorized Signature

Acknowledged, agreed to and issued pursuant to the aforementioned Trust Indenture this \_\_\_\_\_ day of October, 2023.

CERTIFICATES OF AUTHENTICATION AND REGISTRATION

This is the Certificates referred to in the within-mentioned Trust Indenture which has been authenticated and registered.

BOKF, NA

By: \_\_\_\_\_  
Authorized Signature

Date of Authorization: \_\_\_\_\_

FORM OF ASSIGNMENT TO APPEAR ON CERTIFICATES

For value received the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within Certificates and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the same on the books of the Trustee kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

Signature Guaranteed:

\_\_\_\_\_  
\_\_\_\_\_

NOTICE: Signature(s) guarantee must be made by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15.

EXHIBIT B

ADDRESSES FOR NOTICE PURPOSES

LESSOR: The New Mexico Public Schools Education Technology Assistance Foundation, LLC  
c/o Cuddy & McCarthy, LLP  
P.O. Box 4160  
Santa Fe, New Mexico 87502  
Attn: Jacquelyn Archuleta-Staehlin

Phone: (505) 988-4476

LESSEE: Gadsden Independent School District No. 16  
4950 McNutt Road  
Sunland Park, New Mexico 88063

Phone: (575) 882-6200

TRUSTEE: BOKF, NA  
100 Sun Avenue, NE  
Suite 500  
Albuquerque, New Mexico 87102

Phone: (505) 222-8447