
LEASE PURCHASE AGREEMENT

dated as of _____, 2006

by and between

New Mexico Finance Authority, as Lessor

and

Gadsden Independent School District No. 16

LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT, dated as of _____, 2006 ("Lease"), by and between New Mexico Finance Authority, an agency of the State of New Mexico, as lessor (such lessor, together with any successor by merger, acquisition or otherwise, "Lessor"), and the Gadsden Independent School District No. 16, a school district created pursuant to the laws of the State of New Mexico, as lessee ("Lessee");

WITNESSETH:

WHEREAS, Lessee, which is a school district as defined in NMSA 1978, Section 6-15A-3(E), as amended, wishes to facilitate the acquisition and purchase of certain Property (as defined herein) to be used by Lessee, and Lessee is authorized pursuant to the laws of the State of New Mexico, particularly, NMSA 1978, Sections 6-15A-1 *et seq.*, as amended, to execute, perform, and make payments under contracts for such purposes and for the financing of "education technology equipment," as defined in NMSA 1978, Section 6-15A-3B, as amended; and

WHEREAS, the governing body of Lessee has determined that in order to accomplish such purposes, it is necessary and desirable to acquire the Property pursuant to this Lease; and

WHEREAS, Lessor will cause to be provided funds for the acquisition, delivery, and purchase of the Property to be leased pursuant to this Lease; and

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained, and for other good and valuable consideration, Lessor and Lessee agree as follows:

ARTICLE I: DEFINITIONS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease (as hereinafter defined) 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 Lessee in connection with the acquisition, purchase, or financing of the Property to the extent permitted by the Act.

"Acquisition Fund" means the 2006 Lease Acquisition Fund by that name established and maintained by Lessee pursuant to Section 3.1 of this Lease.

"Act" means the Education Technology Equipment Act, NMSA 1978, Sections 6-15A-1 *et seq.*, as amended.

"Certificate of Acceptance" means a written acknowledgment of Lessee Representative to Lessor stating substantially that all of the Property described in such acknowledgment has been acquired, delivered, and installed in conformity with the specifications of the manufacturer, in substantially the form of Exhibit C hereto.

"Closing Date" means the date on which this Lease is duly executed and delivered by the parties hereof.

"Fiscal Year" means the period beginning on July 1 in any year and ending on June 30 in the next year.

"Lease" means collectively this Lease Agreement.

"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 of Schools or the Finance Director of Lessee or any other person authorized by the governing body of Lessee to act on behalf of Lessee under or with respect to this Lease.

"Lessor" means the New Mexico Finance Authority, an agency of the State of New Mexico, and any successor thereto by merger, acquisition, assignment, or otherwise.

"Lessor's Representative" means the Executive Director of Lessor or other person authorized by Lessor to act on behalf of Lessor under or with respect to this Lease.

"Lien" means, as applied to the property or assets (or the income or profits therefrom) of any Person, in each case whether the same is consensual or non-consensual or arises by contract, operation of law, legal process, or otherwise: (a) any mortgage, lien, pledge, attachment, charge, lease, conditional sale, or other title retention agreement, or other security interest or encumbrance of any kind; or (b) any arrangement, express or implied, under which such property or assets are transferred, sequestered, or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person.

"Maximum Rate" means a net effective interest rate (as defined in and calculated in accordance with the provisions of NMSA 1978, Sections 6-14-1 through 6-14-3, as amended) of twelve percent (12%).

"Permitted Investments" means any investment under the laws of the State for school districts.

"Person" means an individual, joint stock company, trust, unincorporated association, joint venture, corporation, business or owner trust, partnership, or other organization or entity (whether governmental or private).

"Prepayment" means any payment made by Lessee pursuant to Article IX of this Lease as a prepayment of the Rent Payments.

"Property" means, to the extent permitted by the Act, all of the education technology equipment, as defined by NMSA 1978, Section 6-15A-3(B), as amended, as set forth in Exhibit A hereof, to be acquired or furnished by Lessor and leased to Lessee under this Lease.

"Rent Payment" means the payment or payments due from Lessee to Lessor in accordance with Section 4.4 hereof as set forth in this Lease.

"Rent Payment Date" means the dates on which Rent Payments are due under this Lease as provided in Section 4.4.

"Rent Payment Fund" means the fund or funds by that name established by Lessee pursuant to Section 5.4 of this Lease.

"Special Counsel" means an attorney duly admitted to the practice of law before the highest court of the State in which he/she maintains an office and who is not an employee of Lessor or Lessee.

"State" means the State of New Mexico.

"Term" or "Term of this Lease" means the time during which this Lease is in effect, as provided in Section 4.2 of this Lease.

"Transaction" means, collectively, the transactions contemplated by the Related Documents.

ARTICLE II: REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Lessee. Lessee represents, covenants, and warrants to Lessor as follows:

(a) Lessee has full power and authority to execute, deliver, and perform under this Lease; all required procedures with respect to Lessee's execution, delivery, and performance of this Lease have been (or will be) complied with properly and in a timely manner; the execution, delivery, and performance of this Lease by Lessee have been duly authorized by Lessee and are not in contravention of any applicable laws or the terms of any other agreement to which Lessee is a party; this Lease evidences a valid and binding obligation of Lessee enforceable in accordance with its

terms; and the Rent Payments are contractual obligations of Lessee within the meaning of NMSA 1978, Section 6-15A-8, as amended.

(b) There are no pending or threatened actions, suits, proceedings, or investigations contesting the authority for execution, delivery, or performance of, or expenditure of funds pursuant to this Lease.

(c) Information supplied and statements made or to be made by Lessee in any financial statement or current budget prior to or contemporaneously with this Lease are now, and will be true and correct on the Closing Date, and do not and will not omit to state any material facts required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(d) Lessee has immediate need for, and expects to make immediate use of, substantially all of the Property being leased under this Lease, which need, at the time of approval of this Lease, is not temporary or expected to diminish in the foreseeable future.

Section 2.2. Representations, Covenants and Warranties of Lessor. Lessor represents, covenants, and warrants to Lessee as follows:

(a) Organization and Good Standing. Lessor is an agency of the State of New Mexico by virtue of the laws of the State; has power to enter into this Lease; has full power to own, hold, finance and furnish Property in accordance herewith and to lease and sell the same; and has duly authorized the execution and delivery of all such agreements.

(b) No Conflicts. Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge, or encumbrance whatsoever upon any of the property or assets of Lessor or upon the Property, except as provided under the terms hereof.

(c) Valid and Binding Obligation. This Lease, when executed and delivered by Lessor and assuming the valid execution and delivery hereof by Lessee, will constitute the legal, valid, and binding obligations of Lessor enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally and general equitable principles.

ARTICLE III: DEPOSIT OF MONEYS; ACQUISITION OF THE PROPERTY

Section 3.1. Deposit of Moneys. On the Closing Date, Lessor shall cause an amount equal to the aggregate of the principal component of each Rent Payment set forth in Exhibit B hereto to be deposited into the Acquisition Fund, to be established and maintained at a depository of the

District, by the District to acquire the Property set forth in Exhibit A and to pay the financial and legal costs of the District associated with this Lease.

Section 3.2. Acquisition of the Property. Except as otherwise provided in Section 3.2 hereof, Lessor agrees to the acquisition of the Property set forth in Exhibit A. Lessor hereby authorizes Lessee to enter into one or more contracts or purchase orders providing for the use, acquisition, and purchase of the Property. Lessor will take such actions as may be necessary to cause the Property to be delivered to Lessee. Lessee agrees that upon acquisition of any item of the Property it will take possession of that item of the Property under the terms and provisions of this Lease.

Lessee shall acquire such Property under this Lease within a reasonable period of time. Lessee and Lessor may agree to substitute other education technology equipment qualifying for financing pursuant to the Act for any item of Property, provided Lessee shall notify Lessor of such substitution and after all property (and property substituted for the Property) is acquired, Lessee shall provide an inventory of the Property actually acquired under this Lease to Lessor.

Notwithstanding the foregoing, there shall therefore be no offset or reduction for any reason of the Rent Payments required to be made by Lessee which are described herein.

Section 3.3. Payment of Acquisition Costs. As provided in Section 3.1, payment of the cost of acquiring Property shall be made from the moneys deposited by Lessor with Lessee in the Acquisition Fund as provided in Section 3.1.

Section 3.4. Unexpended Proceeds in Acquisition Fund. On the earlier of (a) three years from the Closing Date or (b) the filing with Lessor of the final inventory of Property as contemplated in the second paragraph of Section 3.2, Lessee shall cause to be transferred to the Rent Payment Fund all excess moneys remaining in the Acquisition Fund maintained by Lessee (other than any moneys, if any, retained therein to pay Acquisition Costs not then due and payable) to be applied either (i) to pay any portion of Rent Payments thereafter coming due, or (ii) to prepay the Rent Payments pursuant to Article IX hereof.

ARTICLE IV: AGREEMENT TO LEASE; TERMINATION OF THIS LEASE; RENT PAYMENTS; TITLE TO PROPERTY

Section 4.1. Lease. Lessor hereby leases to Lessee the Property, and Lessee hereby leases the Property from Lessor, upon the terms and conditions set forth herein.

Section 4.2. Term of Lease. The Term of this Lease of Property and of the right to use each item of such Property described therein shall commence on the Closing Date and shall continue until all payments under this Lease to finance such Property have been paid and are no longer outstanding. Lessor shall give Lessee written notice of the occurrence of the Closing Date and the final payment of this Lease.

Section 4.3. Possession. It is contemplated that Lessee will take possession of each item of the Property in accordance with the terms of the acquisition contracts and purchase orders

described in Section 3.2 hereof. Notwithstanding the failure of Lessee to take possession of any item of Property, however, each Rent Payment hereunder shall be due on the date set out in this Lease.

Section 4.4. Rent Payments for Property; Pledge and Sinking Fund.

(a) Obligation to Pay. Subject to the provisions of Article IX, Lessee agrees to pay Lessor, its successors, and assigns, for the right of use, acquisition and purchase of Property, the sum obtained by adding the Rent Payments (denominated into components of principal and interest) in the amounts specified in Exhibit B hereto on each Rent Payment Date as reflected in such exhibit. Subject to the provisions of Article IX, Lessee agrees to pay any amounts required to be deposited to the Rebate Fund established under Section 5.4 hereof for rebate (hereinafter referred to as a "Rebate Payment") to the U.S. Department of the Treasury (which amounts shall be calculated by Lessee or its agent and the result of such calculation provided in writing to Lessor). Each Rebate Payment shall be made in accordance with the terms of Section 5.4 hereof. Any amount held in the Rent Payment Fund on any date when a Rent Payment is required to be made shall be credited towards the Rent Payment then due and payable; and no Rent Payment need be made by Lessee into the Rent Payment Fund on any such date if the amounts then held in the Rent Payment Fund are at least equal to the Rent Payment then required to be paid. Lessee hereby covenants to establish and maintain with respect to the Lease, a special interest and sinking fund to be denoted the "Rent Payment Fund", at a depository of the Lessee, solely for the benefit of this Lease. The Rent Payment Fund shall be kept separate and apart from all other funds and accounts of Lessee and held in trust for the benefit of Lessor, and shall be used only for paying Rent Payments. All ad valorem taxes levied and collected for the purpose of making such Rent Payments shall be deposited, just prior to the payment of interest to be paid to Lessor pursuant to each Lease. The obligation of Lessee to make Rent Payments and Rebate Payments is absolute and unconditional and is not subject to abatement or set-off.

There shall annually be assessed, levied, and collected upon all taxable property in Lessee, in addition to all other taxes, a tax which will be sufficient to raise and produce the money required to pay the interest component of the Rent Payments as such interest component comes due and to provide and maintain a sinking fund adequate to pay the principal component of the Rent Payments as such principal component matures, pursuant to NMSA 1978, Section 6-15A-6, as amended, as the same becomes due and payable, without limit as to rate or amount. The Board of Education of Lessee ("Board of Education") shall establish adequate budgetary provision, approved by the New Mexico Public Education Department, to promptly pay as it becomes due, all Rent Payments. This Section is hereby declared to be the certificate to the County Commissioners of the Counties of Doña Ana and Otero, New Mexico as to the amount of taxes necessary to be levied for the purposes herein stated. Said tax shall annually be assessed, levied and collected at the same time and in the same manner as other taxes are assessed and collected, but nothing herein contained shall be construed as to prevent Lessee or the officers thereof from applying any other funds available for that purpose to the payment of said Rent Payments as the same respectively mature and become due, and upon such payments, the levies herein provided for, may thereupon, to that extent, be diminished. The sums produced by the levies above provided to meet the Rent Payments when due, are hereby applied for that purpose, and the amount for each year will be included in the annual budget and the appropriation bills to be adopted and passed by the Board of Education in each year, respectively. The Board of Education does hereby levy and order to be levied, taxes sufficient to pay the Rent

Payments. It shall be the duty of the Board of Education annually at the time and in the manner provided by law for levying other taxes, if such action shall be necessary, to effectuate the provisions hereof with reference to the levy and collection of taxes; and the Board of Education shall require the officers of and for Lessee to levy, extend, and collect such taxes in the manner provided by law for the purpose of funding the Rent Payment Fund for the payment of the Rent Payments. Such taxes, when collected, shall be kept for and applied only to the payment of the Rent Payments as hereinbefore specified. However, if such taxes are insufficient for payment of the Rent Payments, Lessee may use other funds that are lawfully available to make such payments. Said ad valorem taxes, sufficient to provide for the payment of the interest component and principal component of the Rent Payments as such interest component comes due and such principal component matures, are hereby pledged for such payment.

(b) Reduction Upon Partial Prepayment. In the event Lessee prepays less than all of the remaining principal components of the Rent Payments correspondent to a Lease pursuant to an option to pre-pay such principal components, as set forth in this Lease, the amount of such prepayment shall be applied to reduce the principal and thereby the interest components of each subsequent remaining Rent Payment such that the Rent Payments are reduced on an approximately proportionate basis corresponding to the reduction in principal with respect to the Lease as a result of the redemption thereof from the proceeds of such prepayment.

(c) Fair Rental Value. Such Rent Payments for each rent payment period during the Term of this Lease shall constitute the total rental for such rent payment period and shall be paid by Lessee in each rent payment period for and in consideration of the right of the use of the Property during each such period for which such rental is to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of such Property.

Section 4.5. Quiet Enjoyment. During the Term of this Lease, Lessor shall provide Lessee with quiet use and enjoyment of the Property, and during such term Lessee shall peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth herein. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so. Notwithstanding the foregoing, Lessor shall have the right to inspect the Property as provided in Section 6.3 hereof.

Section 4.6. Title to the Property. During the Term of this Lease, Lessee shall hold title to the Property described herein and any and all additions which comprise repairs, replacements, or modifications, and Lessor shall retain an equitable lien on the title to such Property. In the event of default as set forth in Section 8.1, remedies of Lessor shall be restricted as described in Section 8.2 hereof.

If Lessee (a) prepays the Rent Payments in full pursuant to Article IX, or (b) pays all Rent Payments during the Term hereof as the same come due and payable, all right and interest of Lessor in and to all of the Property described in Exhibit A hereto shall be transferred to and vest in Lessee, without the necessity of any additional document of transfer.

Section 4.7. Security Interest. Lessor acknowledges that its equitable lien on the title of the Property is unperfected and unsecured.

ARTICLE V: MAINTENANCE, TAXES, TAX COVENANTS AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease, as part of the consideration for the right of rental of the Property, all improvement, repair, and maintenance of the Property shall be the responsibility of Lessee, and Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of Lessee or any sublessee thereof. In exchange for the Rent Payments herein provided, and subject to Lessor's equitable lien as hereinbefore set forth, Lessee agrees to, and does hereby grant Lessee the right to use the Property as hereinbefore and hereafter or specifically set forth.

Lessee shall use the Property only for its proper purposes and will not install, use, operate or maintain the Property improperly, carelessly or in violation of any applicable law, ordinance, rule or regulation of any governmental authority, or in a manner contrary to the nature of the Property or the use contemplated by its manufacturer. The Property shall be used solely in the conduct of Lessee's operations. Lessee shall obtain, at its expense, all registrations, permits, and licenses, if any, required by law for the installation and operation of the Property.

Lessee shall also pay or cause to be paid all taxes and assessments of any type or nature charged to Lessor or Lessee or levied, assessed or charged against any item of the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

Lessee may, at Lessee's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that nonpayment is affecting timely payment of the Rent Payments, or in the case of Lessor that, in the opinion of Special Counsel, by nonpayment of any such items, the interest of Lessor in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments, or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 5.2. Modification of the Property. Lessee, at its own expense, shall have the right to make additions, modifications and improvements to any item of the Property. All such additions, modifications and improvements shall thereafter comprise part of the Property and be subject to the provisions of this Lease. Such additions, modifications, and improvements shall not in any way damage the Property or cause it to be used for purposes other than those authorized under the provisions of state and federal law or in any way which would impair the tax exempt status of the interest components of the Rent Payments required to be made with respect to the Property; and the Property, upon completion of any additions, modifications, and improvements made pursuant to this

Section, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements. Lessee shall not alter, remove, destroy, or permanently cover any manufacturer's nameplate, serial number or other similar distinguishing number or mark on the Property. Lessee will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any additions, modifications, improvements, repairs, renewals, or replacements made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify or cause to be notified Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide Lessor with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to Lessor. Upon the request and at the expense of Lessee, Lessor will cooperate fully in any such contest.

The Property is and shall at all times be and remain personal property and will not be affixed to or be a part of the real property upon which it may be situated. If requested by Lessor, Lessee, at Lessee's expense, will furnish a landlord or mortgage waiver with respect to the Property.

Section 5.3. Liens. Lessee shall not, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property, other than the respective rights of Lessor and Lessee as herein provided. Except as expressly provided in this Article V, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, encumbrance or claim, for which it is responsible, if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, or encumbrance of claim.

Section 5.4. Tax Covenants with Respect to Lease. Lessee and, to the extent applicable, Lessor covenant to each other, to take any action necessary to assure, or to refrain from any action which would adversely affect, the treatment of each interest component of each Rent Payment ("Interest Component") to be made pursuant to this Lease as an obligation described in section 103 of the Internal Revenue Code of 1986 ("Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, Lessee and, to the extent applicable, Lessor, covenant to each other as follows:

(a) to take any action to assure that no more than ten percent (10%) of the proceeds of the Lease or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than ten percent (10%) of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by Lessee, with respect to such private business use, do not, under the terms of this Lease or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than ten percent (10%) of the Rent Payments due under this Lease, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds five percent (5%) of the proceeds of the Lease or

the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of five percent (5%) is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or five percent (5%) of the proceeds of the Lease (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the Lease being treated as a "private activity bond" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Lease being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Lease, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code), which produces a materially higher yield over the term of the Lease, other than investment property acquired with:

(i) proceeds of this Lease invested for a reasonable temporary period of 3 years or less or, in the case of a refunding obligation, for a period of 30 days or less until such proceeds are needed for the purpose for which the obligation is issued,

(ii) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(iii) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed ten percent (10%) of the proceeds of this Lease;

(g) to otherwise restrict the use of the proceeds of this Lease or amounts treated as proceeds of this Lease, as may be necessary, so that the Lease does not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings);

(h) Lessee shall deposit in the Rebate Fund the benefit of the United States of America at least once during each five-year period (beginning on the date of delivery of this Lease), and no later than the fifth anniversary of such date of delivery, an amount that is at least equal to ninety percent (90%) of the "Excess Earnings," within the meaning of section 148(f) of the Code and Lessee shall pay to the United States of America, not later than 60 days after this Lease have been paid in full, one hundred percent (100%) of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

(i) to maintain such records as will enable Lessor and Lessee to fulfill their respective responsibilities under this section and section 148 of the Code and to retain such records for at least six years following the final payment of principal and interest on this Lease.

In order to facilitate compliance with the above subsections (h) and (i), a "Rebate Fund" shall be established within the Rent Payment Fund by Lessee for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation Lessor. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

Lessor and Lessee understand that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the Closing Date of this Lease. It is the understanding of Lessor and Lessee that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to this Lease, Lessor and Lessee will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of the interest component of the Rent Payments under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements that are applicable to the Lease, Lessor and Lessee agree to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of the Interest Component of the Rent Payments under section 103 of the Code. In furtherance of such intention, Lessor and Lessee hereby authorize and direct Lessor Representative and Lessee's Representative, respectively, to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of Lessor and Lessee, which may be permitted by the Code, as are consistent with the purpose for the execution and delivery of the Lease.

Section 5.5. Damage to or Destruction of Property. Upon the delivery of any Property to Lessee's installation site, Lessee shall bear the entire risk of loss, damage, theft or destruction of such Property from any and every cause whatsoever. No loss, damage, destruction, or other event shall release Lessee from the obligation to pay the full amount of Rent Payments or from any other obligation hereunder.

Section 5.6. Allocation of, and Limitation on, Expenditures for the Property. Lessor and Lessee covenant to account for the expenditure of sale proceeds and investment earnings to be used for the Property on their books and records by allocating proceeds to expenditures within 18 months of the later of the date that (a) the expenditure is made, or (b) the Property is acquired. The foregoing notwithstanding, Lessee shall not expend sale proceeds or investment earnings thereon more than 60 days after the earlier of (a) the fifth anniversary of the Closing Date of this Lease, or (b) the date this Lease is retired, unless Lessee obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of this Lease or the interest component of any Rental Payment. For purposes hereof, Lessor and

Lessee shall not be obligated to comply with this covenant if they obtain an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest component of any Rental Payment.

Section 5.7. Disposition of Project. Lessee covenants that the property constituting the Property will not be sold or otherwise disposed in a transaction resulting in the receipt by Lessee of cash or other compensation, unless Lessee obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the status, for federal income tax purposes, of the interest component of any Rental Payment. For purposes of the foregoing, the portion of the Property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, Lessee shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest component of any Rental Payment.

ARTICLE VI: DISCLAIMER OF WARRANTIES; ACCESS

Section 6.1. Warranties. Lessee acknowledges and agrees that the Property is of the size, design and capacity selected by Lessee based upon its own judgment. LESSEE HAS MADE AND MAKES NO WARRANTY OR REPRESENTATION, WARRANTY OR COVENANT, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE, VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE PROPERTY OR ANY ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY ITEM THEREOF OR THE CONFORMITY OF THE PROPERTY TO SPECIFICATIONS OR PURCHASE ORDERS, ITS DESIGN, DELIVERY, INSTALLATION OR OPERATION. IN NO EVENT SHALL LESSEE BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, IN CONNECTION WITH OR ARISING OUT OF THIS LEASE FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF THE EQUIPMENT.

Section 6.2. Lessee's Right to Enforce Warranties. Lessee shall have all rights with respect to the warranties of the manufacturers and any other persons with respect to the Property and the right to enforce such warranties against the manufacturers and such other persons. Any recovery under a warranty shall be payable to Lessee.

Section 6.3. Access to the Property. Lessee agrees that Lessor and any Lessor Representative, and Lessor's successors or assigns, shall have the right at all times during regular business hours of Lessee and upon reasonable notice to Lessee to examine and inspect the Property.

Section 6.4. Release and Indemnification. Subject to the limitations and exceptions in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.*, as amended and to the extent it otherwise lawfully may, Lessee shall indemnify and save harmless Lessor and its agents, employees, officers, and directors from and, at Lessee's expense, defend Lessor and its agents, employees, officers, and directors against all liability, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including but not limited to reasonable attorneys' fees) of whatsoever

kind or nature which in any way relate to or arise out of this Lease or the selection, purchase, delivery, ownership, rental, possession, operation, condition, sale or return of the Property; provided that Lessee shall not indemnify any person under this Section 6.4 for any liability arising from such person's own negligence or willful misconduct. All amounts which become due from Lessee under this provision shall be credited with any amounts received by Lessor from insurance provided by Lessee and shall be payable by Lessee within thirty (30) days following demand therefor by Lessor and shall survive the termination or expiration of this Lease.

ARTICLE VII: ASSIGNMENT, SUBLEASING AND AMENDMENT

Section 7.1. Assignment and Subleasing by Lessee. This Lease may not be assigned or subleased by Lessee.

Section 7.2. Amendment of Lease. This Lease may not be altered, modified or canceled without the consent of Lessor and Lessee. Notwithstanding anything herein to the contrary, without receiving the consent of any Person, Lessee may enter into personal property finance contracts with persons other than Lessor and pledge an ad valorem tax, as contemplated by the Constitution of the State of New Mexico and NMSA 1978, Section 6-15A-6, as amended, to support its obligations with respect to acquiring "education technology equipment," it being expressly agreed by Lessor and Lessee that this Lease does not constitute an exclusive method of financing or acquiring "education technology equipment" by Lessee.

ARTICLE VIII: EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events Of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used herein, any one or more of the following events whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

- (a) Lessee's failure to levy taxes in amounts sufficient to make any Rent Payment when due or to provide the moneys levied for such purposes to Lessor in accordance with the terms hereof; or
- (b) Lessee's failure to make any payment required hereunder, other than a Rent Payment, or its failure to comply with any other covenant, condition or agreement of Lessee hereunder for a period of thirty (30) days after notice thereof; or
- (c) Any representation or warranty made by Lessee hereunder shall be untrue in any material respect as of the date made; or
- (d) Lessee shall make, permit or suffer any unauthorized assignment, transfer or other disposition of this Lease or any interest herein, or any part of the Property or any interest therein; or
- (e) Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee, receiver

or custodian for Lessee or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for Lessee or a substantial part of its property and is not discharged within sixty (60) days of such appointment; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) days of such institution; or

Section 8.2. Remedies Upon Event of Default. Upon the happening and continuance of (a) any event of default specified in Section 8.1, Lessor or its assigns may proceed to protect and enforce this Lease and enforce the pledge of Lessee's ad valorem taxes by such judicial proceedings as such Persons shall deem most effectual, either by suit in equity, mandamus or by action at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the exercise of any power granted herein be enforced, provided, it being the express intent that the payment of the Rent Payments hereunder by the levying of ad valorem taxes, without limit as to rate or amount, through a mandamus action be sought prior to seeking any other remedy against Lessee, or to enforce any other legal or equitable right vested in Lessor, its assignee by such Lease or by law.

Section 8.3. No Waiver. No delay or omission to exercise any right or power accruing upon any default 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 from time to time and as often as may be deemed expedient. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach thereunder. In order to entitle Lessor to exercise any remedy reserved to it in this Article VIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

ARTICLE IX: PREPAYMENT OF RENT PAYMENTS AND EXERCISE OF PURCHASE OPTION AT END OF LEASE

Section 9.1. Optional Prepayment. Lessee shall have, and is hereby granted, the option to prepay Rent Payments relating to this Lease on and after August 1, 2007 in whole or in part, at the option of the District, with funds derived from any available and lawful source, at the redemption price of par, plus accrued interest to the date fixed for redemption each as specified in Exhibit B hereto by (a) well and truly paying or causing to be paid such Rent Payment and (b) giving Lessor notice in writing of Lessee's intention to exercise such option. Any prepayment in part of Rent Payments in accordance with this Section 9.1 shall be in amounts equal to at least \$5,000 and any integral multiple of \$5,000 of the principal component of a Rent Payment, plus interest accruing on such principal component of a Rent Payment to the date fixed for Prepayment. Lessee shall, upon prepayment of Rent Payments, specify to Lessor the specific payments being prepaid, if less than all Rent Payments hereunder are being prepaid.

Section 9.2. Credit for Amounts on Deposit. As a result of prepayment of Rent Payments in whole, Lessee utilize all amounts then on deposit in a Rent Payment Fund or the Acquisition Fund towards the amounts then required to be so prepaid and if any amounts remain on deposit in such

funds after prepayment of all Rent Payments and other amounts required to be paid by Lessee hereunder, Lessee may use such residuals for any lawful purpose.

Section 9.3. Exercise of Lessee's Option to Purchase Property at End of Lease. Pursuant to the Act, Lessor grants to Lessee the right to purchase the Property at the end of the Term of this Lease for \$1. Lessee hereby exercises such option to purchase and Lessor hereby acknowledges receipt of \$1 from Lessee and other valuable consideration.

ARTICLE X: MISCELLANEOUS

Section 10.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to Lessee: Gadsden Independent School District No. 16
4950 McNutt
Sunset Park, New Mexico 88063
Attn: Superintendent

If to Lessor: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Executive Director

Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 10.2. Binding Effect and Beneficiaries. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns (to the extent permitted hereby).

Section 10.3. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.4. Investments. Amounts on deposit from time to time in the Rent Payment Fund and Acquisition Fund shall be invested in Permitted Investments by Lessee; provided, however, that Lessee shall first obtain the written consent of Lessor before directing such investment.

Section 10.5. Net-Net-Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and Lessee hereby agrees that Rent Payments shall be an absolute net return to Lessor, free and clear of any expenses, charges, or set-offs whatsoever.

Section 10.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reason-

ably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

Section 10.7. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

Section 10.9. Lessor and Lessee. Whenever under the provisions of this Lease the approval of Lessor or Lessee is required, or Lessor or Lessee is required to take some action at the request of the other, such approval or such request shall be given for Lessor by a Lessor Representative and for Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 10.10. Timeliness. Time is of the essence. No covenant or obligation hereunder to be performed by Lessee may be waived except by the written consent of Lessor, and a waiver of any such covenant or obligation shall not be deemed a waiver of any other covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the condition giving rise to such remedy. Lessor's rights hereunder are cumulative and not alternative.

Section 10.11. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section hereof.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

New Mexico Finance Authority, as Lessor

By: _____
Title: _____

Board of Education of the
Gadsden Independent School District No. 16,
as Lessee

(SEAL)

By: _____
President

Attest:

Secretary

EXHIBIT A: LISTING OF PROPERTY

EXHIBIT B: RENT PAYMENTS, RENT PAYMENT DATES AND PREPAYMENTS

Schedule of Rent Payments and Rent Payment Dates

<u>Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total</u>
			\$

Each Rent Payment shall, in accordance with Section 4.4(a) of this Lease, be paid to Lessor on or before the date that it is due.

Schedule of Prepayments

<u>Date</u>	<u>Amount</u>
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If exercised, the Schedule of Rent Payment above must be revised to reflect the prepayment when made.

EXHIBIT C: CERTIFICATE OF ACCEPTANCE

PART I

[To be executed by Lessee]

I, the undersigned Lessee Representative, within the meaning and for the purposes of the Lease Agreement dated as of _____, 2006, by and between New Mexico Finance Authority, as Lessor, and the Gadsden Independent School District No. 16, as Lessee, hereby certify, in accordance with Section 3.2 of the Lease, the following:

1. [The Property for which payment has been made from the Acquisition Fund is described under Purchase Order No. _____ as summarized in Exhibit A, to the Lease and a brief description of such Property is as follows: _____

_____].

[Alternative: The Property for which payment has been made from the Acquisition Fund is not set forth under Exhibit A to the Lease, but is substitute Property, as agreed by and between Lessor and Lessee, which is briefly described as follows: _____

_____].

3. The Property described above has been acquired, delivered and installed in conformity with the specifications of the manufacturer.

This Certificate is the final Certificate of Acceptance pursuant to the above-referenced Lease Agreement.

Name of Lessee Representative

Date: _____

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