

TO BE RECORDED AS LEASE

**LEASE AGREEMENT**

LEASE AGREEMENT (the "Lease") made and entered into as of August 10, 2021, by and between the ESTILL COUNTY SCHOOL DISTRICT FINANCE CORPORATION, 253 Main Street, Irvine, Kentucky 40336 (the "Corporation") and the BOARD OF EDUCATION OF THE ESTILL COUNTY, KENTUCKY SCHOOL DISTRICT, 253 Main Street, Irvine, Kentucky 40336 (the "Board").

**WITNESSETH:**

THAT WHEREAS, the Board is charged with the responsibility under Chapter 160 of the Kentucky Revised Statutes ("KRS") to provide educational facilities necessary and desirable for the welfare of its citizens and inhabitants but the Board is without lawful means to incur an indebtedness in the amount required for financing Phase VII renovations to Estill County High School (the "school building" or "school property" or "school improvements" or "Project"), but may lawfully provide for the construction of the Project by renting the property upon which the Project is to be located pursuant to the provisions of KRS 162.120 through 162.300 and KRS 162.385, as repealed, amended and reenacted (the "School Bond Act"), and

WHEREAS, the Corporation has been formed as a non-profit, non-stock, public and charitable corporation duly organized under the School Bond Act and KRS Chapter 273 and KRS Section 58.180, having for its corporate purpose cooperation with the Board in financing the costs of school building facilities for and on behalf of the Board, with the power to borrow money, encumber properties and do any and all things necessary or incidental to the purposes of its incorporation, and

WHEREAS, the Corporation pursuant to a Bond Resolution unanimously adopted by its Board of Directors, is about to authorize the sale of the Bonds hereinafter identified and it is necessary that the Corporation and the Board arrange for the repayment of said Bonds through the lease of the Project from the Corporation to the Board, and

WHEREAS, it is desired that the Corporation, acting on behalf of the Board authorize, sell, issue and deliver its "School Building Revenue Bonds, Series 2021, dated approximately August 10, 2021" (the "Bonds") on behalf of the Board pursuant to the provisions of the School Bond Act, and

WHEREAS, the Board, by a Resolution duly adopted has offered to rent said property from the Corporation pursuant to the authority vested in it by the School Bond Act from the date of this Lease until June 30, 2022;

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND FURTHER CONSIDERATION OF THE ISSUANCE OF THE BONDS BY THE CORPORATION, THE PROCEEDS OF WHICH ARE TO BE USED TO ACQUIRE, CONSTRUCT, AND IMPROVE THE PROJECT, IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:**

## ARTICLE I

### DEFINITIONS

#### Section 1.01.

"Architects" means the firm of licensed Kentucky architects employed by the Board for the design of the construction of the respective Project.

"Board" means the Board of Education of the Estill County, Kentucky School District.

"Bonds" means \$13,430,000 aggregate principal amount of "Estill County School District Finance Corporation School Building Revenue Bonds, Series 2021, dated approximately August 10, 2021" authorized pursuant to a Resolution of the Board of Directors of the Corporation and this Lease.

"Bond Fund" or "Sinking Fund" means the separate and special debt service fund established with the Paying Agent under the Corporation's Resolution for the purpose of paying the principal of and interest on the Bonds.

"Bond Resolution" or "Resolution" means the Resolution passed and adopted by the Board of Directors of the Corporation authorizing the Bonds.

"Bond Registrar" or "Paying Agent" means Regions Bank, Nashville, Tennessee, so designated under the Resolution.

"Commonwealth" or "State" means the Commonwealth of Kentucky.

"Construction" means and includes inter alia (a) preliminary planning to determine the feasibility of the Project; the engineering, architectural, legal, physical, and economic investigations and studies necessary thereto; and surveys, designs, plans, working drawings, specifications, procedures and other actions necessary for the construction of the Project; (b) the erection, building, acquisition, alteration, remodeling, improvement or extension of the Project; (c) the inspection and supervision of the construction of the Project, and all costs incidental to the construction and financing of same; and such terms shall also relate to and mean any other physical devices or appurtenances in connection therewith, or reasonably attendant thereto; and (d) any and all other acts performed in connection with the planning, implementation, acquisition, financing or construction of the Project.

"Construction Contract" means the contract or contracts relating to the construction of the Project entered by the Corporation and the Board.

"Construction Fund" means the Construction Fund established under the Bond Resolution.

"Corporation" means the Estill County School District Finance Corporation formed pursuant to the School Bond Act acting by and through its Board of Directors.

"Department" means the Kentucky Department of Education, acting on behalf of the Kentucky Board of Education or the Commissioner of Education.

"Insurer" means the bond insurance company, if any, that insures the Bonds.

"KRS" means the Kentucky Revised Statutes, as amended.

"Lease Agreement" or "Lease" means this agreement by and between the Corporation and the Board whereunder the Project financed from the proceeds of the Bonds has been leased by the Corporation to the Board and the rental revenues derived thereunder pledged to the payment of the Bonds.

"Parity Bonds" means the Corporation's School Building Revenue Bonds issued to finance or refinance the school building(s) constituting the Project.

"Project" means Phase VII renovations to Estill County High School which has been identified on the Priority Order of the Approved School Facilities Plan and Offer of Assistance.

"Requisition for Funds" means the voucher in substantially the same form as set forth in the Bond Resolution, submitted by the Board to effect the payment for costs of the Project from the Construction Fund.

"Schedule of Annual Rentals" means the schedule attached to this Lease as Exhibit A setting forth the total annual rentals due from the Board to the Corporation sufficient in amount to pay the principal and interest requirements of the Bonds.

"Schedule of Principal and Interest Requirements" means the schedule attached to this Lease as Exhibit A setting forth the total principal and interest requirements for the Bonds.

"School Bond Act" means Sections 162.120 through 162.300 and 162.385 of the Kentucky Revised Statutes as repealed, amended, and reenacted.

## ARTICLE II

### CONSTRUCTION OF PROJECT

Section 2.01. The Corporation agrees to cause the improvements to said Project school building to be constructed, and completed as expeditiously as possible in accordance with the plans and specifications of the Architect prepared and approved in accordance with Section 162.160 of the School Bond Act, and to the lease the same to the Board, and the Board agrees to lease said school building property as aforesaid from August 10, 2021, until June 30, 2022, and thereafter, should the Board renew this Lease, from year to year for a rental payable from year to year amounting to a sum sufficient to amortize the unpaid portion of the cost to said Corporation of said Project school building as evidenced by the Bonds from time to time outstanding, together with the costs of maintaining and insuring said school building property, and paying the expenses incident to the payment of the Bonds, including transfer and registration fees of the Paying Agent and Bond Registrar, all subject to the following terms and conditions.

## ARTICLE III

### INITIAL RENTAL; ANNUAL RENEWAL RENTALS

Section 3.01. The Board agrees to lease and rent said Project school building property from the Corporation to be used for educational purposes, only for the period ending June 30, 2022 for the rental set forth in the Schedule of Annual Rentals attached hereto as Exhibit A, plus the costs of maintenance, insurance and Bond administration expenses, it being hereby certified by the Board that the rental provided herein, for that period does not exceed the anticipated revenue of the Board for the period available for that purpose. The Board shall have an exclusive option to renew this Lease from year to year for a period of one year at a time at the rentals set out in Exhibit A if said Bonds are issued and sold in the principal amount assumed, payable in ample time to meet the payments of principal and interest falling due on said Bonds. The Board shall have the right to use and occupy said Project school building property from the date of this Lease.

Section 3.02. In the event the Bonds are issued in a principal amount other than the amount assumed herein and in the Resolution, or in the event the interest rates on said Bonds are fixed at rates other than those set forth in the Schedule of Principal and Interest Requirements attached hereto as Exhibit A the rental requirements shall be automatically adjusted upward or downward accordingly in order that the annual rental due each year from the Board shall be an amount equal to the principal and interest requirements becoming due on the Bonds for the period in question.

Section 3.03. The Board's Debt Service Requirement shall be paid directly to the Paying Agent semi-annually on the 15<sup>th</sup> day of February and the 15<sup>th</sup> day of August, commencing February 15, 2022. The February payment shall be equal to the Board's Contribution to Debt Service for interest becoming due on the Bonds on March 1 and the August payment shall be equal to the Board's Contribution to Debt Service for interest becoming due September 1, plus the Board's portion of principal due on September 1.

In any event, the rental payments due from the Board each year shall be such amounts as may from year to year be necessary to meet the principal and interest requirements of the Bonds, plus the costs of maintaining and insuring the Project and paying necessary Bond administration expenses.

#### **ARTICLE IV**

##### **ANNUAL OBLIGATIONS; OPTION TO RENEW**

Section 4.01. Nothing herein contained shall be construed as binding the Board to renew this Lease or pay the rentals due hereunder for any but the first period ending June 30, 2022; however, the Board shall have the exclusive option to renew said Lease, but said Lease shall automatically renew itself each year for a period of one year unless the Board shall at least sixty (60) days prior to the beginning of any year send written notice of its intention not to exercise its option to renew to the Corporation, to the Commissioner of Education and to the original purchaser of the Bonds.

Section 4.02. Any other provisions herein to the contrary notwithstanding, the Board shall be liable to the extent only of its anticipated revenue for the year herein provided during which any obligation of it arises, and all obligations herein are on an annual basis; however, the Board shall not have the right to renew this Lease for any year unless its anticipated revenue is such that it can become legally obligated in the amount herein provided as being the annual obligation of the Board if this Lease is renewed.

#### **ARTICLE V**

##### **CONVEYANCE TO BOARD ON PAYMENT OF BONDS**

Section 5.01. It is understood and agreed that if the Board shall pay the rentals above specified from year to year and to and through the year 2044, and by reason of the application of such rentals to the payment of the principal and interest on said Bonds, said Bonds shall have on September 1, 2044, or at any time, through any other method, been fully paid redeemed, canceled and retired, the Corporation will convey said property to the Board free of all liens and encumbrances, and any balance remaining in the Bond Fund and maintenance fund for the payment of said Bonds will be returned to the Board.

#### **ARTICLE VI**

##### **CONTRACT VOID IF NOT RENEWED**

Section 6.01. It is further understood and agreed that should the Board fail to exercise its option to renew this Lease in any year, then this contract shall become null and void, and the Board shall give immediate possession of the Project property to the Corporation for the benefit of the Registered Owners of the Bonds.

## **ARTICLE VII**

### **APPLICATION OF INSURANCE PROCEEDS**

Section 7.01. It is further agreed that in case the Project school building on said premise is totally destroyed by fire, lightning, windstorm or other hazard covered by insurance, the Corporation shall have the right to expend such proceeds to restore the property; that if such proceeds are not expended by the Corporation for the restoration of said property at the earliest practicable date, then all such insurance proceeds shall be used for the purpose of redeeming said outstanding Bonds, and said property shall be and become the property of the Board, in which case the Corporation shall convey said property to the Board free and clear of all encumbrances. In the event of partial destruction by fire, lightning, windstorm or other hazard covered by insurance, it is agreed between the parties that the proceeds of such insurance solely and only for the purpose of making the necessary replacements and repairs to the Project building and improvements, provided further that if following such partial or complete destruction any principal or interest payment is due on the Bonds and there are no other funds available for said payments, such insurance proceeds must be applied to prevent a default in such payment. Notwithstanding the foregoing, the Corporation reserves the right to call the Bonds in whole or in part for redemption upon the total destruction by fire, lightning, windstorm or other hazard of any of the building constituting the Project and apply casualty insurance proceeds to such purpose.

## **ARTICLE VIII**

### **OPTION TO PURCHASE SITE**

Section 8.01. The Bonds are issued subject to the Board having the right on any date to purchase from the Corporation, and to secure the release from the statutory mortgage lien and pledge of revenues securing the Bonds the Project property herein described and identified for a price equal to the principal amount of said Bonds outstanding on the date upon which said option is exercised, plus a sum equal to the accrued interest on said principal amount of Bonds to said date upon which said option is exercised, plus a further sum sufficient to accomplish the complete redemption and retirement (or defeasance) of such principal amount of said Bonds, subject to the rights of the Owners of the Parity Bonds.

Section 8.02. If the Board shall desire to exercise said option, it may do so by giving notice of its election in writing to the Corporation at least ninety (90) days prior to the date upon which it desires to exercise said option. Thereupon, the Paying Agent at the direction of the Corporation shall call for payment a principal amount of said Bonds equal to such sum, such call to be strictly in accordance with the provisions of such Bonds and of the Bond Resolution; provided, however, that the right is reserved in the Board and the Corporation to provide for the defeasance of said Bonds through the deposit and investment of sufficient funds in escrow to provide for the payment of the principal and interest requirements on the Bonds until such time as it is determined by the Board to be financial feasible to redeem and retire said Bonds.

## **ARTICLE IX**

### **LIMITATION OF STATUTORY MORTGAGE LIEN**

Section 9.01. The parties hereto agree that there shall be inserted in the form of Bond Certificate a clause reading substantially as follows:

"The statutory mortgage lien upon and the pledge of the revenues derived from said school building property, which are hereby recognized as valid and binding (subject to the rights of the owners of Parity Bonds), are hereby created and granted in favor of the Registered Owner of this Bond and the issue of which it forms a part, and said school building property and any appurtenances thereto shall remain subject to said statutory mortgage lien and revenue pledge until the payment in full of the principal and interest on this Bond and the issue of which it forms a part; provided, however, that said statutory mortgage lien and revenue pledge are and shall be restricted in their application to the school building and the appurtenances thereto financed by this Bond and the issue of which it forms a part, and such easements and rights of way

for ingress, egress and the rendering of services thereto as may be necessary for the proper use and maintenance of the same; the right being hereby expressly reserved to erect or construct upon the school site described in the Resolution authorizing the issuance of said Bonds and in the Lease Agreement under which same is leased to the Board of Education of the Estill County School District, other independently financed school building projects free and clear of said statutory mortgage lien and revenue pledge, which other independently financed school building project may or may not have a party wall with and adjoin the school building and appurtenances which are subject to said statutory mortgage lien and revenue pledge, provided no part of the cost of said other independently financed school building project is paid from the proceeds of the sale of this Bond and the issue of which it forms a part; and provided the necessary easements for ingress and egress shall be deemed to exist and continue to exist for all school building, improvements and additions financed by this or other bonds".

The parties hereto agree that this Lease is subject to the provisions of said clause as inserted in the form of Bonds.

## **ARTICLE X**

### **LEGAL DESCRIPTION OF PROJECT SITE LEASED**

Section 10.01. The school building Project and appurtenances financed from the proceeds of the Bonds and which are subject to the statutory mortgage lien and pledge of revenues securing said Bonds, is to be located upon the site described in Exhibit B to this Lease. Notwithstanding anything contained herein to the contrary, said lien and revenue pledge securing the Bonds are restricted in their application to the exact location of the Project buildings and appurtenances, with rights of way for ingress and egress, and the right is specifically reserved by the Corporation and/or the Board to construct upon any unoccupied portion of the school site hereinafter described other structures and improvements for school purposes, which structures and improvements shall not be subject to any extent to said lien and pledge.

## **ARTICLE XI**

### **MAINTENANCE AND INSURANCE**

Section 11.01. It is agreed and understood that so long as the Board continues to lease the school building it will, at its own expense, maintain and keep same in good state of repair and will procure and pay the cost of insurance on the Project building and the contents thereof against loss by fire, lightning, windstorm or other hazard, and that the amount of such insurance shall be at all times the full insurable value of the building and the contents thereof or the amount of the Bonds outstanding from time to time, whichever is greater.

## **ARTICLE XII**

### **ANNUAL ASSIGNMENT OF BOARD'S RIGHT TO STATE FUNDS**

Section 12.01. Under the terms of this Lease, and any renewal thereof, the Board has agreed so long as the Bonds remain outstanding, and in conformance with the intent and purpose of KRS 160.160(5), in the event of a failure by the Board to pay the rentals due under the Lease, and unless sufficient funds have been transmitted to the Paying Agent, or will be so transmitted, for paying said rentals when due, the Board hereby grants under the terms of this Lease to the Corporation the right to notify and request the Kentucky Department of Education to withhold from the Board a sufficient portion of any undisbursed funds then held, set aside, or allocated to the Board and to request said Department or Commissioner of Education to transfer the required amount thereof to the Paying Agent for the payment of such rentals.

**ARTICLE XIII**

**ADDITIONAL CONTRACT IF PARITY BONDS ISSUED**

Section 13.01. The parties hereto agree that in the event it becomes necessary to issue additional bonds ranking on a parity with said Bonds in order to make additional improvements to the school Project building in accordance with plans and specifications approved by the Kentucky Department of Education, they shall enter into an additional Lease Agreement, whereunder the respective annual rental payments during the life of such additional bonds are increased by the amount of annual principal and interest requirements of such additional bonds.

**ARTICLE XIV**

**CORPORATION'S COVENANT TO MAINTAIN CORPORATE EXISTENCE**

Section 14.01. The Corporation hereby covenants in accordance with the Bond Resolution that so long as any of the Bonds remain outstanding and unpaid it will not amend its Articles of Incorporation in any manner adversely affecting the security and rights of the Registered Owners of the Bonds.

Section 14.02. The Corporation further covenants that so long as any of the Bonds remain outstanding and unpaid it will maintain its corporate existence and continue in good standing as a non-profit, non-stock, Kentucky corporation and file all reports, including the required annual "Certificate of Continued Existence", and comply with all requirements of Kentucky and Federal law so as to continue its corporate existence as a lawfully constituted Kentucky corporation and agency and instrumentality of the Board.

**ARTICLE XV**

**CONTRACTUAL PROVISIONS SUBORDINATE TO RIGHTS OF REGISTERED OWNERS OF BONDS**

Section 15.01. It is hereby agreed that the provisions of this Lease are hereby subordinate to the rights of the Registered Owners of the Corporation's School Building Revenue Bonds, Series 2021, dated August 10, 2021 and subject to the rights of the Owners of the Parity Bonds.

**ARTICLE XVI**

**BOND ADMINISTRATION EXPENSES; FEES AND CHARGES OF BOND REGISTRAR/PAYING AGENT**

Section 16.01. The Board agrees to pay as additional rentals due under this Lease all of the fees, charges and expenses of the Bond Registrar and Paying Agent as set forth in a certain Appointment Agreement by and between the Bond Registrar/Paying Agent, the Corporation and the Board. The Board understands and agrees that the semiannual rental payments due under this Lease as set forth in the Article III hereof must be remitted to the Paying Agent no later than the date specified in order that said semiannual rental payments may be applied to the payment of interest on and principal of the Bonds as the same become due.

## **ARTICLE XVII**

### **BOND INSURANCE, RIGHTS OF BOND INSURER**

Section 17.01. In the event the Purchaser of the Bonds elects to have the Bonds insured by a bond insurance company (“Insurer”), neither the Board nor the Corporation shall be required to pay any of the cost of such insurance but the board and Corporation hereby agree to cooperate with such Insurer and execute any documents necessary to insure the Bonds. Upon the Board providing notice to the Corporation, pursuant to Section 4.01 hereof, of its intention not to exercise its option to renew the Lease, the Insurer shall be considered the Registered Owner of the Bonds and shall have all of the rights of the Registered Owners to enforce the provisions of the Bond Resolution, this Lease, the Appointment of Bond Registrar/Paying Agent and any other documents related to the issuance of the Bonds.



