

**LEASE AGREEMENT
BETWEEN
HAMILTON SCHOOL DISTRICT
AND
UNIVERSITY OF MONTANA-BITTERROOT COLLEGE**

THIS LEASE is made and effective on this ____ day of _____, 2023 by and between HAMILTON SCHOOL DISTRICT, 217 Daly Avenue, Hamilton, MT 59840 (hereinafter referred to as "Lessor"), and UNIVERSITY OF MONTANA-BITTERROOT COLLEGE, 32 Campus Drive, Missoula, MT 59812 (hereinafter collectively referred to as "Lessee"), an agency of the State of Montana.

1. **DESCRIPTION OF PREMISES AND USES.** Lessor leases to Lessee the Lessor-owned facility known as Westview School, located at 103 S. 9th St., Hamilton, Montana, 59840, (hereinafter referred to as "Premises"). Lessor shall make the parking lot and unpaved parking area surrounding the Premises available to Lessee at no additional cost. Lessor and Lessee acknowledge that the Premises does not include the modular unit located on the south side of the facility.

2. **USE.** Lessee may only use the Premises for the operation of Lessee's postsecondary educational program, and all incidental uses thereto unless Lessor gives advance written consent to another use. Lessee shall not create a nuisance or use the Premises for any illegal purposes. Lessee acknowledges that neither Lessor nor Lessor's agents have made any representation or warranty as to the present or future suitability of the Premises for Lessee's intended use.

3. **TERM AND POSSESSION.**

- a. The term of this Lease shall be one (1) year commencing on July 1, 2023, through June 30, 2024, unless sooner terminated pursuant to any provision contained herein.
- b. The Parties agree to meet at least once every three (3) months during the term of this Lease for the purpose of engaging in good faith negotiations to establish lease terms that are acceptable to both parties' respective boards of trustees/regents for the future lease of Lessor's property located at 225 North 5th Street, Hamilton, MT 59840 ("Washington") by Lessee, with the goal that Lessee will commence such lease of Washington on or about the expiration of this Lease of the Premises (as set forth herein) on June 30, 2024. Any future lease of Washington by Lessee is conditioned upon the approval of such lease by the Parties' respective Boards of Trustees/Regents, in their independent and sole discretion.

4. **ACCEPTANCE OF PREMISES.** Lessee accepts the Premises "**AS IS**" and in its present condition. The Parties acknowledge that Lessor agrees that the maintenance projects set forth in Exhibit A are in need of repair and/or replacement. Lessor agrees to use reasonable efforts to remedy the maintenance projects set forth in Exhibit A during the months of June, July, and August, 2023. Additionally, Lessor agrees to assess and diagnose any performance issues related to the projects set forth in Exhibit B to further assess the cost and

feasibility of addressing any recommended repairs and/or upgrades to those projects set forth in Exhibit B. Lessor has provided Lessee and/or Lessee's representatives with ample opportunities to examine the Premises to their satisfaction.

Lessee acknowledges that the modular unit on the south side of the Premises will be used for Lessor's purposes during some or all of the term of this Lease. Lessee agrees to not act in a manner that shall disrupt Lessor's activities with regard to this unit. Lessor agrees that if it determines that it no longer needs this unit for its activities, the unit shall be made available to Lessee pursuant to the terms of this Lease.

5. **RENT.** Lessee shall pay Lessor annual rent of \$80,325. Lessor shall invoice Lessee for the full amount of the annual rent payment, to be paid by Lessee no later than October 31, 2023.

6. **REMODEL OF PRESENT STRUCTURE.** Permission for improvements or remodeling shall be at the sole discretion of Lessor. Lessor will be kept informed of the status of all alterations, renovations, improvements and repairs. Unless required to be removed by Lessor, all improvements, alterations and renovations affixed to the Premises shall remain with the Premises upon termination of this Lease.

7. **COMPLIANCE WITH LAWS.**

a. Lessee's Compliance. Lessee shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and zoning that relate to the physical condition of the Premises and relate to the use of the Premises.

b. Warranty. Lessee warrants that all improvements placed on the Premises, and Lessee's use of the Premises will comply with all federal, state and local laws, ordinances, rules, zoning, regulations, and Lessor's policies ("applicable laws"). Lessee shall comply with all applicable laws that relate to the physical condition of the Premises and relate to the use of the Premises.

8. **USES PROHIBITED.** Lessee agrees that it shall not use or permit the use of the Premises for any unlawful or illegal purpose, including uses that are not in compliance with Lessor's policies, rules and regulations or uses that are not specifically approved by Lessor's Board of Trustees.

Lessee shall enforce Lessor's drug-free, tobacco-free, harassment-free and weapon-free policies relating to its use of the Premises. Lessee may permit the presence and/or consumption of alcohol on the Premises after 4:00 pm on weekdays or anytime on the weekends and in compliance with University of Montana Policy 203.1 and upon notice to Lessor.

9. **UTILITIES AND SERVICES.**

a. **Utilities.** Lessee shall pay all costs associated with garbage disposal, telecommunication, and janitorial services related to the Premises during the Lease term. Lessee shall pay for all costs associated with the Premises' use of electricity,

gas, water, and sewer ("Utilities") between July 1, 2023 and June 30, 2043, however, Lessee's obligation to pay for such expenses shall not exceed the amount of twenty-five thousand and 00/100 dollars (\$25,000.00). Once Lessee has met its obligation to pay for Utilities pursuant to this paragraph, Lessor shall become responsible for the payment of the reasonable use of Utilities associated with the Premises for the remainder of the Lease term. Lessor shall invoice Lessee for Utilities in four quarterly installments: September 1, 2023; December 1, 2023; March 1, 2024, and June 30, 2024. Lessee shall pay Lessor within 15 days of receipt of invoice.

- b. **Maintenance.** Lessee shall be responsible for all routine maintenance to the interior, non-structural parts of the Premises arising from ordinary wear and tear. Lessor shall maintain the Premises and make such repairs, including without limitation to buildings, entries/exits, sidewalks, grounds, and parking areas, necessary to keep them in a safe and serviceable condition.
- c. **Parking Area.** Lessor shall not be responsible by virtue of this Lease for any paving of the unpaved parking area that may be required by municipal code. Lessee shall not be responsible by virtue of this Lease for any paving of the unpaved parking area that may be required by municipal code. The parties agree to cooperate with one another regarding seeking any variance from or phased approach to municipal regulations regarding paving.
- d. **Snow Plowing.** Lessee, at its expense, shall remove snow and ice from the parking lots, sidewalks and walkways that service the Premises.
- e. **Parties' Right of Access.** Right to enter. Lessee will provide Lessor's representatives with access to the Premises when requested, during reasonable business hours and upon 24 hours' advanced notice (except in the case of emergencies), and Lessor will have the right to retain a complete set of keys for use in emergencies. Lessor shall make reasonable efforts to preserve and maintain the confidentiality of any of Lessee's student, financial, or employee records during any such access for emergencies.

Lessor may temporarily close the building, if required, because of a life-threatening or building-threatening emergency. Lessor shall use its best efforts to close the building during Lessee's non-school hours only unless required because of an emergency.

10. **REPAIRS AND MAINTENANCE.**

- a. **Lessor's Obligations.** Except as provided in Paragraph 9, Lessor shall be responsible for the care, maintenance and upkeep of the Premises including any common areas, both interior and exterior, including sidewalks, parking areas, landscaping, etc., at the same level or standard maintained for Lessor's other educational buildings. Lessor shall be responsible to maintain and repair in good order all structural portions of the Premises, including the roof, foundation, plumbing, electrical, exterior walls, interior structural walls, and other

common areas, as well as all utilities, HVAC and other services that do not exclusively serve the Premises.

b. **Lessee's Obligations.** Lessee shall keep the Premises in good order and shall not commit any waste or nuisance. In the event that Lessee becomes aware of any concerns regarding the infrastructure and/or associated systems of the Premises, Lessee shall promptly notify Lessor.

11. **ASSIGNMENT AND SUBLEASING.**

a. **Consent Required.** Lessee shall not transfer, mortgage, encumber, assign or sublease all or part of the Premises without Lessor's advance written consent.

b. **Procedure.**

(1) Lessee must provide Lessor in writing: (a) the name and address of the proposed sublessee or assignee; (b) the nature of the proposed sublessee's or assignee's business it will operate in the Premises; (c) the terms of the proposed sublease or assignment; and (d) reasonable financial information so that Lessor can evaluate the proposed sublessee or assignee under the terms herein.

(2) Lessor shall, within thirty (30) days after receiving the information as required above, give notice to Lessee to permit or deny the proposed sublease or assignment. Approval by Lessor's Board of Trustees is required.

12. **SIGNAGE.** The parties acknowledge that the use of the Premises may require the use, erection or other construction of a sign. Any signs or advertising which is intended to be placed outside the interior walls of the Premises shall be approved, in advance, by Lessor.

13. **INSPECTION OF PREMISES.** Lessee acknowledges that its representatives have had sufficient access to the Premises to conduct a full and complete inspection and investigation of the Premises which has been accomplished prior to the execution of this Agreement. Lessor represents to Lessee that, to the best of its knowledge, there are no latent defects in the plumbing, electrical or structural components of the Premises.

14. **NOTICES.** All notices, demands or other writings required or permitted to be given hereunder shall be given in writing and may be affected by personal delivery, or by mail, and, if given by mail, shall be deemed sufficiently given if sent by registered or certified mail and addressed as follows:

To Lessor: Superintendent
Hamilton School District
217 Daly
Hamilton, MT 59840

To Lessee: Vice President for Administration and Finance
University of Montana
32 Campus Drive
Missoula, MT 59812

And
Bitterroot College UM
103 South 9th Street
Hamilton, MT 59840

The address to which any notice, demand or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

15. **INSURANCE.**

a. **Insurance Coverage of Premises.** Lessor shall maintain insurance for damage or destruction of the Premises with fire and extended coverage at replacement value for all Lessor-owned improvements and equipment.

b. **Additional Insurance.** Lessee shall, at Lessee's sole expense, maintain in effect at all times during the term self-insurance coverage with limits not less than those set forth below:

(1) Workers' Compensation Insurance, minimum limit as defined by statute and as same may be amended from time to time;

(2) The State of Montana does not purchase commercial insurance, rather the state is self-insured and provides coverage in accordance with the Tort Claims Act, Title, 2, Section 9, Chapters 1-3, Montana Code Annotated as respects the negligence of the state. Coverage limits are for Tort Liability (including Auto) in the amounts of \$750,000 per claim \$1,500,000 per occurrence. Pursuant to §2-9-101, MCA through §2-9-305, MCA, the State of Montana is unable to name third party contractors as additional insured. Certificate shall give insured 30 days advanced written notice of any change in coverage including impending cancellations. Lessee will provide a Certificate of Insurance upon request.

16. **INDEMNIFICATION OF LESSOR.**

a. Lessee shall indemnify, defend and hold Lessor harmless from claims for personal injury, death or property damage from incidents occurring in or about the Premises which are caused by the negligent or willful misconduct of Lessee, its agents, employees or invitees.

b. Lessor shall indemnify, defend and hold Lessee harmless from claims for personal injury, death or property damage from incidents occurring in or about the Premises which are caused by the negligent or willful misconduct of Lessor, its agents, employees or invitees.

c. When the claim is caused by the joint negligence or willful misconduct of Lessor and Lessee, Lessor's duty to defend, indemnify and hold Lessee harmless shall be in proportion to Lessor's allocable share of the joint negligence or willful misconduct.

d. The provisions of this paragraph shall survive the expiration of the Lease.

17. **DEFAULT AND REMEDIES.**

a. Each of the following events shall be a default by Lessee and a breach of this Lease:

(1) abandonment or surrender of the Premises, or failure to perform as required, any other covenant or condition of this Lease;

(2) the subjection of any right or interest of Lessee to attachment, execution or other levy, or to seizure under legal process;

(3) any violation of applicable laws, rules, ordinances or regulations in the use and operation of Lessee's postsecondary educational program or the Premises, except minor violations.

b. In the event either party shall bring any action against the other for relief hereunder, the prevailing party shall be entitled to their reasonable attorneys' fees and all court costs incurred.

No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or conditions, nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof.

The rights and remedies given to Lessor by this Lease shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive at law or in equity of the rights and remedies which Lessor might otherwise have by virtue of a default under this Lease, and the exercise of one such right or remedy by Lessor shall not impair Lessor's standing to exercise any other right or remedy.

18. **LIENS.** Lessee covenants and agrees to keep the Premises at all times during the term hereof free and clear of all liens. This paragraph does not grant consent to subject Lessor's property to these liens.

19. **RIGHT OF FIRST REFUSAL.** Lessor hereby grants Lessee a right of first refusal with respect to the Premises. This right of first refusal establishes Lessee with the right to have first opportunity to purchase the Premises under terms negotiated by the parties if Lessor's Board of Trustees determines to sell the property in accordance with MCA §§ 20-6-602 – 20-6-604 or the right to meet the terms of any other proposed contract offer submitted to Lessor before it is executed by Lessor and the original party submitting the offer. The right of first refusal remains in effect during the term of this Lease and must be renegotiated upon renewal

or extension. The right of first refusal automatically expires upon termination or expiration of this Lease, whichever occurs first. Lessee acknowledges that any sale of the Premises must be in accordance with MCA §§ 20-6-602 – 20-6-604.

20. **TERMINATION.** This Lease may be terminated by either party with or without cause upon notice of sixty (60) days.

21. **SURRENDER.** Upon the expiration, eviction or other termination of this Lease, Lessee shall quit and surrender to Lessor the Premises "broom-clean", in good order and condition, ordinary wear and damage by elements excepted. Lessee shall repair the Premises and land to original condition in the event Lessor requires Lessee to remove improvements and otherwise remedy the Premises as set forth in this lease.

22. **CONFLICTS OF LAW.** This Lease shall be governed and construed pursuant to the laws of the State of Montana.

23. **SEPARABILITY.** If any provision of this Lease shall be declared to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

24. **ATTORNEYS' FEES AND COSTS.** If Lessor shall commence any action against Lessee for breach or to enforce any term hereof, or if Lessee shall commence an action against Lessor for breach, or to enforce any term hereof, the prevailing party shall be entitled to all costs and expenses incurred, including reasonable attorneys' fees and costs incurred.

25. **CONDEMNATION.** If any legally, constituted authority condemns the Premises or such part thereof which shall make the Premises unsuitable for leasing, this Agreement shall cease when the public authority takes possession. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

26. **SUBORDINATION.** Lessee accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Premises, or upon the building, thereon, and to any renewals, refinancing and extensions thereof, but Lessee agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Lessor is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Premises, and Lessee agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Lessor may request.

27. **SUCCESSORS.** The provisions of this Lease shall extend to and be binding upon Lessor and Lessee and their respective legal representatives, successors and assigns.

28. **WAIVER.** No waiver by any party of any provision of this Lease shall be deemed to be a continuing waiver of that provision, or of any other provision hereof, or of any subsequent breach by the other party of the same or any other provision

29. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

30. **HEADINGS.** The paragraph captions contained in this Lease are for convenience only and shall not be considered as construing or interpreting any provision hereof.


31. **FINAL AGREEMENT.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

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

**UNIVERSITY OF MONTANA
– BITTERROOT COLLEGE**

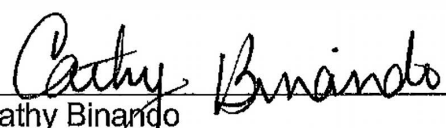
HAMILTON SCHOOL DISTRICT

Paul Lasiter, Date
VP for Operations & Finance



Patrick Hanley Date
Chair, Board of Trustees 07/05/2023

Thomas Gallagher Date
Dean, University of Montana



Cathy Binardo Date
Business Manager 07/05/2023

EXHIBIT A

Maintenance Projects

Lessor agrees to use reasonable efforts to remedy the following maintenance projects during the months of June, July, and August, 2023:

1. Repair / Replace South Entry Door
2. Repair / Replace Lab Sinks
3. Repair / Replace Faculty Room Sinks
4. Repair / Replace Sinks in Rooms 112, 118, and 119
5. Repair / Replace Window Latches and Some Windows
6. Repair / Replace Bathroom Faucet Aerators
7. Repair / Replace Lawn Sprinklers
8. Address Water Not Meeting Standards
9. Address Floor Tiles That Present a Legitimate Safety Concern

EXHIBIT B

Projects for Further Assessment, Diagnosis, and Recommendation

Lessor will assess and diagnose performance issues concerning the following projects and will further assess the cost and feasibility of addressing any recommended repairs and/or upgrades to same:

1. HVAC Service to the Premise's Gymnasium
2. Worn Out Floor Tiles Throughout the Building
3. Blacktop in Parking Area and Paint Clear Handicap Accessible Parking and Yellow Line Separators