

JEDO CONTRACT NO. C-03-2017
Joint Education Agreement
By and Among
THE JOINT ECONOMIC DEVELOPMENT ORGANIZATION OF TOPEKA AND
SHAWNEE COUNTY, KANSAS,
GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND
WASHBURN UNIVERSITY

This AGREEMENT ("*Agreement*") is made and entered into effective the 26th day of July, 2017, by and among the Joint Economic Development Organization of Topeka and Shawnee County, Kansas, hereinafter referred to as "*JEDO*", Growth Organization of Topeka/Shawnee County, Inc., hereinafter referred to as "*GO TOPEKA*" and Washburn Institute of Technology through Washburn University, hereinafter referred to as "*WASHBURN TECH*" (collectively the "*Parties*" and each individually a "*Party*").

WHEREAS, JEDO owns the real estate and improvements formerly known as the Menninger Army Reserve armory located at 2014 SE Washington, Topeka, Shawnee County, Kansas, to be known as the East Topeka Learning Center and referred to herein as the "*ETLC*"; and

WHEREAS, JEDO and its economic development contractor, GO TOPEKA, desire to implement an adult education facility within such ETLC; and

WHEREAS, GO TOPEKA is amenable to providing WASHBURN TECH with incentives in the amount of up to \$1,500,000 over three academic years for purposes of reimbursing WASHBURN TECH for the costs of providing education, training and related services at the ETLC; and

WHEREAS, WASHBURN TECH desires to support JEDO and GO TOPEKA by providing educational classes and services at the ETLC as more specifically set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE FOLLOWING MUTUAL TERMS AND COVENANTS, IT IS HEREBY AGREED AMONG THE ABOVE PARTIES:

POSSESSION OF ETLC

Section 1. ETLC. JEDO hereby leases to WASHBURN TECH, and WASHBURN TECH hereby leases from JEDO, the ETLC.

Section 2. TERM. The initial term of this lease and Agreement shall commence on July 1, 2018, or on the date WASHBURN TECH takes occupancy, whichever date is later, and terminate on June 30, 2028. The parties shall meet no later than June 30, 2027 to discuss renewal of this Agreement.

Section 2.1 CASH BASIS LAW. Notwithstanding Section 2, the parties acknowledge that Washburn University is subject to the Cash Basis Law, K.S.A. 10-1101 *et seq.* and, as such, cannot create an indebtedness that will extend beyond a current budget year.

Section 3. BASE RENT. For the use and occupancy of the ETLC, WASHBURN TECH agrees to pay JEDO, its successors and assigns, base rent of One Dollar (\$1.00) per year. Base rent and all other sums (whether designated additional rent or otherwise, all of which is hereinafter referred to "Rent") payable to JEDO under this lease and delivered to JEDO at the address in Section 31 or at such other place as JEDO shall notify WASHBURN TECH in writing.

Section 4. ADDITIONAL RENT. In addition to the base rent provided in paragraph 3, WASHBURN TECH shall pay to JEDO the following items as additional rent:

(a) REAL ESTATE TAXES. As Washburn Tech is exempt from paying property taxes pursuant to K.S.A. Section 79-201, Washburn Tech will not be responsible

for any real estate taxes that may be assessed against the property.

(b) INSURANCE PREMIUMS. JEDO shall at all times during the term of this lease and any renewals thereof, maintain in effect a policy or policies of property insurance coverage *on a special form* written by an insurance company authorized to do business within the State of Kansas, in an amount equal to and not less than eighty percent (80%) of the replacement cost of the original building, and to furnish WASHBURN TECH proof thereof. Such policy of insurance shall provide protection against the losses so insured against for the benefit of JEDO and WASHBURN TECH as their interest may appear under the terms of this lease, and shall contain the provision or endorsement required by Section 8. WASHBURN TECH agrees to pay to JEDO, within twenty (20) days of demand, the premium(s) of such insurance for each year during the lease term and any renewals thereof; provided, however, for those fractional years at the commencement and termination of the lease, WASHBURN TECH shall only be responsible to pay a proportionate share of such premium based on the number of months of occupancy. Upon receipt of premium statements for any given year, JEDO shall compute the share of such statement due from WASHBURN TECH and a summary shall be furnished to WASHBURN TECH reflecting the actual amount of premium due from WASHBURN TECH. JEDO shall furnish to WASHBURN TECH, within thirty (30) days of receipt, copies of any and all such premium statements, as well as a certificate of insurance evidencing such coverage.

Section 5. OWNERSHIP. JEDO covenants that it has good title to the ETLC and that WASHBURN TECH, upon paying the rentals herein reserved and observing, performing and keeping all the covenants and agreements herein specified, shall and may lawfully and

peacefully have, hold, use, occupy, possess and enjoy the leased ETLC throughout the term of this lease, and any renewals thereof.

Section 6. PERSONAL PROPERTY TAXES. As Washburn Tech is exempt from paying property taxes pursuant to K.S.A. Section 79-201, Washburn Tech will not be responsible for any personal property taxes that may be assessed against its property.

Section 7. LIABILITY INSURANCE. WASHBURN TECH agrees to maintain, at its own expense, during the term of this lease and any renewals thereof, a comprehensive policy of public liability and property damage insurance written by an insurance company authorized to do business in the State of Kansas, which names JEDO, GO TOPEKA and WASHBURN TECH as additional insureds. WASHBURN TECH shall deliver to JEDO and GO TOPEKA, prior to right of entry, copies of such policies or certificates evidencing the existence of such insurance and amounts of such insurance with loss payable clauses satisfactory to JEDO. Such policy shall provide coverage in an amount not less than One Million Dollars (\$1,000,000) single limit combined bodily injury and property damage for each occurrence and Two Million Dollars (\$2,000,000) aggregate, to cover all situations where any person or persons claims personal injury, death or property damage in or upon the leased ETLC. The limit of any such insurance shall not, however, limit the liability of WASHBURN TECH hereunder. All such policies shall be written as primary policies not contributing with and not in excess of coverage which JEDO or GO TOPEKA may carry.

Section 8. SUBROGATION. Each party hereby waives and releases any and all claims, demands, and causes of action which such party might otherwise have against the other parties for damage to or loss of the building and other improvements on the leased ETLC, or any other contents and leasehold improvements therein belonging to WASHBURN TECH, and

arising from perils ordinarily insured against under standard fire and extended coverage insurance policies issued in the State of Kansas, whether such damage or loss is occasioned by the negligence of the parties, their agents, servants or employees, or otherwise; that all policies of insurance written to insure such buildings, improvements, and contents against such perils shall contain a proper provision, by endorsement, or otherwise, whereby the insurance carriers issuing the same shall acknowledge that the insured has so waived and released its recovery against the other party hereto and shall waive the right of subrogation which such carrier might otherwise have had against such other party, all without impairment or invalidation of such insurance.

Section 9. ENTRY. JEDO and GO TOPEKA shall have the right to enter the ETLC during normal business hours, or during an emergency, for the purpose of inspecting the same or for the purpose of doing anything that may be required under this lease, or for the purpose of performing duties required by WASHBURN TECH by this lease but which WASHBURN TECH has failed to perform.

Section 10. MAINTENANCE AND REPAIRS. WASHBURN TECH shall, at its sole cost and expense, keep, repair, replace and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the ETLC and every part thereof and any and all appurtenances thereto constructed or installed by WASHBURN TECH, wherever located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, WASHBURN TECH's signs, storefront, all plumbing and sewage facilities within the ETLC including free flow up to the main sewer line, fixtures, the heating and air conditioning systems, including the regular replacement of heating and air conditioning filters, electrical systems (whether or not located in

the ETLC), sprinkler system, walls, floors, and ceilings, meters, the foundation, exterior walls and roof of the building in which the ETLC are located, main utility lines and the structural portions of the ETLC, all WASHBURN TECH's improvements and installations made by WASHBURN TECH under the terms of this lease and any repairs required to be made in the ETLC due to burglary of the ETLC or other illegal entry into the ETLC or any damage to the ETLC caused by a strike involving WASHBURN TECH or its employees. WASHBURN TECH shall keep the interior of the ETLC clean and free from rubbish and dirt of all kinds, and shall keep sidewalks and service areas clean and free of rubbish, snow and ice. WASHBURN TECH further agrees to keep the ETLC clear and free from rodents, bugs, and vermin.

If WASHBURN TECH shall fail to comply with any of the foregoing requirements, then JEDO may perform such acts and shall not be responsible to WASHBURN TECH for any loss or damage that may accrue to WASHBURN TECH thereby, and WASHBURN TECH shall, forthwith, on demand, pay to JEDO the cost thereof. WASHBURN TECH shall not commit waste or permit waste to be committed on or upon the leased ETLC and, at the termination of this lease, shall surrender and deliver the ETLC to JEDO in as good condition as the same were at the commencement of the term hereof, usual wear and tear excepted.

Subject to the foregoing, JEDO shall be responsible for any extraordinary capital replacement or repair costs, provided that any such replacement or repair is not due to WASHBURN TECH's neglect or failure to properly maintain, in which case WASHBURN TECH shall be responsible for any such extraordinary capital replacement or repair costs.

Section 11. ALTERATIONS OR ADDITIONS. WASHBURN TECH shall have the right to make alterations or additions to the ETLC; provided, however, that such alterations or additions are at the sole cost and expense of WASHBURN TECH; that such alterations or

additions be of good workmanship and material at least equal to that of the original construction and improvements previously made by JEDO; and that such alterations or additions neither reduce the size and strength of the existing building nor adversely affect the market value of the ETLC; provided further, however, that no such alterations or addition to the ETLC which cost more than Fifty Thousand Dollars (\$50,000) shall be made by WASHBURN TECH without the written consent of JEDO. At the termination of this lease and Agreement, either all alterations or additions to the existing building will remain and become the sole and absolute property of JEDO, or if WASHBURN TECH chooses to remove such alterations or additions, WASHBURN TECH shall restore the building to its original condition. If WASHBURN TECH proposes a new program at ETLC and the new program requires a physical addition to the existing ETLC premises, if JEDO approves of making the changes, the Parties shall discuss who will be financially responsible for such physical addition. If no agreement can be reached, then WASHBURN TECH will not be required to offer the new program at the ETLC.

WASHBURN TECH shall be responsible to JEDO for any loss or damage to the original building caused by WASHBURN TECH in making alterations or additions to the original building and WASHBURN TECH shall, forthwith, on demand, pay to JEDO the cost thereof.

Section 12. DAMAGE OR DESTRUCTION. If, at any time during the term of this lease, the ETLC shall be damaged by fire or other unavoidable casualty, the same shall be repaired as speedily as possible at the expense of JEDO; provided, however, if in JEDO's sole discretion the damage is such that repair or rebuilding would not be advisable, JEDO may terminate this Agreement.

Section 13. UTILITIES. WASHBURN TECH is responsible for, and shall pay all deposits and charges for utility services furnished to the ETLC, such as water, light, telephone,

electricity, gas and heat, together with any taxes thereon, within the time limit specified by each supplier of a utility service.

Section 14. CONDEMNATION. If the entire ETLC shall be taken under the right of eminent domain by any public authority having the right of condemnation, or if such a portion of the ETLC is so condemned as will prevent the practical use of the remainder of the ETLC for the purposes of WASHBURN TECH, this lease, and all obligations hereunder, shall terminate on the date title vests pursuant to such proceedings. If such taking does not prevent the practical use of the remainder of the ETLC for the purposes of WASHBURN TECH, then this lease shall continue in full force and effect.

Section 15. SUBLET OR ASSIGN. WASHBURN TECH shall not have the right during the term of this lease to sublet all or a portion of the ETLC, unless approved in writing by JEDO. No such subletting or assignment shall release WASHBURN TECH from any of the obligations under the terms of this lease, and JEDO shall at all times have the right to look to WASHBURN TECH for the performance of all the covenants to be performed on the part of WASHBURN TECH.

Section 16. SUBORDINATION. WASHBURN TECH agrees that this lease shall be subordinate to any mortgages that now are, or may hereafter, be placed upon the ETLC; provided, however, that the mortgagee named in such mortgages shall agree to recognize this lease in the event of foreclosure if WASHBURN TECH is not then in default.

Section 17. USE OF ETLC. WASHBURN TECH agrees that the ETLC shall be used and occupied for the purposes of an educational facility and activities relating thereto as discussed below; provided, however, the ETLC may be used for such other purposes as may be approved by JEDO.

Section 18. OCCUPANCY. WASHBURN TECH shall assume possession of the ETLC on July 1, 2018 or as soon thereafter as the contemplated renovations to the ETLC are completed. WASHBURN TECH agrees that it will occupy the ETLC in a careful and proper manner and not for any unlawful purposes, and that it will conform to and obey all laws, ordinances, rules, regulations, requirements and orders of all governmental authorities or agencies respecting the use and occupancy of the ETLC. WASHBURN TECH shall not perform any acts or carry on any practices which may injure the building or be a nuisance or a menace to others.

Section 19. LIENS ON THE ETLC. WASHBURN TECH shall not permit any mechanic's lien, material liens or other lien to stand on the leased ETLC for any labor or material furnished WASHBURN TECH in connection with work of any kind or form on such ETLC by or at the direction of WASHBURN TECH.

Section 20. ENVIRONMENTAL HAZARDS. WASHBURN TECH agrees that any and all Hazardous Material (as defined below) to be brought upon, or kept, or used in or about the ETLC by WASHBURN TECH, its agents, employees, contractors, or invitees, on or after July 1, 2018, shall be used, kept, and stored in a manner that complies with all laws, rules, statutes, and ordinances regulating any such Hazardous Material so brought upon or used or kept in or about the ETLC. If WASHBURN TECH breaches the obligations stated above in this paragraph, or if the presence of Hazardous Material on or about the ETLC caused or permitted by WASHBURN TECH results in contamination of the ETLC, or if contamination of the ETLC or surrounding area by Hazardous Material otherwise occurs for which WASHBURN TECH is legally liable to JEDO and/or GO TOPEKA for damage resulting therefrom, WASHBURN TECH shall indemnify, defend, and hold JEDO and GO TOPEKA harmless from any and all

claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the ETLC or the building, damages for the loss or restriction on the use of rentable or usable space or of any amenity of the ETLC, damages arising from any adverse impact on marketing of space in the building, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) that arise during or after the term of this lease, and any renewals thereof, as a result of that contamination. This indemnification of JEDO and GO TOPEKA by WASHBURN TECH includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material which became present in the soil or ground water on, under, or about the ETLC on or after July 1, 2018. Without limiting the foregoing, if the presence of any Hazardous Material on or about the ETLC caused or permitted by WASHBURN TECH after July 1, 2018, results in any contamination of the ETLC or surrounding area, or causes the ETLC or surrounding area to be in violation of any laws, rules, statutes, or ordinances, WASHBURN TECH shall promptly take all actions at its sole expense as are necessary to return the ETLC and surrounding area to the condition existing before the introduction of any such Hazardous Material; provided that JEDO'S approval of those actions shall first be obtained, which approval shall not be unreasonably withheld so long as those actions would not potentially have any material adverse long-term or short-term effect on the ETLC or surrounding area.

Prior to taking occupancy, JEDO shall provide WASHBURN TECH with all documentation establishing that no environmental hazards exist. WASHBURN TECH shall not be responsible for the costs of the remediation or abatement, nor shall it be responsible for any subsequent costs or claims resulting from such pre-existing environmental hazard and/or

remediation or abatement of said pre-existing environmental hazard.

Additionally, JEDO will not reduce the budgeted costs of planned construction, nor the amount of reimbursement as set out in in Section 27 below due to costs of remediation and/or abatement of any environmental hazard, so as to impact Washburn Tech's ability to provide the proposed educational programming and administrative services at the ETLC as set out in Sections 21 *et seq.* below. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority, the state of Kansas, or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste" pursuant to K.S.A. 65-3430 and amendments thereto, (ii) defined as "hazardous substances" pursuant to K.S.A. 65-3452a and amendments thereto, (iii) defined as a "solid waste" pursuant to K.S.A. 65-3402 and amendments thereto, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. §6903), or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

EDUCATIONAL SERVICES

Section 21. EDUCATIONAL SERVICES. During its occupancy of the ETLC, WASHBURN TECH at its separate cost (subject to reimbursement in Section 27) agrees to provide educational programming that has been assessed based upon high-wage, high-demand data from the state-wide reported analysis, and as those demands change WASHBURN TECH shall adapt the offered programs. If any public entity offers post-secondary educational services

in the East Topeka area that are similar to educational services being offered at the ETLC and which impede the demand for those same educational services at ETLC, then WASHBURN TECH may opt to modify, or if no reasonable modification is available, discontinue offering such educational services at the ETLC.

WASHBURN TECH shall initially provide the following educational programs at the ETLC based on expected demand: commercial truck driving with the opportunity to qualify for a commercial driver's license, building technology, healthcare technology, adult education and literacy services including GED classes and testing, the "Adults Belong in College" program, and workplace skills. Additionally, WASHBURN TECH shall provide services to support students at the ETLC, through face-to face and/or technology interface. WASHBURN TECH shall provide educational programs and services in a similar manner as it does at its other location(s).

Section 22. COMMENCEMENT AND OPERATION. The foregoing programs and services shall commence no later than January of 2019 and be offered throughout each year of the term of this Agreement, providing three (3) semesters of classes annually, subject to demand for programs and offerings.

Section 23. PROMOTING. WASHBURN TECH, JEDO, GO TOPEKA and community partners shall each use their best efforts to promote the programs and services at the ETLC, and include those when relevant and appropriate in its other advertising and promotional efforts.

Section 24. NUMBER OF STUDENTS SERVED. The parties agree that the goal is to serve approximately 400 students each academic year although that goal may not be achieved right away. Additionally, the parties agree that community support (non-financial beyond the

terms of this Agreement) and referrals will be an important piece to achieving and maintaining this goal.

Section 25. REPORTS. When requested by JEDO or GO TOPEKA, WASHBURN TECH shall provide aggregated statistical data relating to the programs, including but not limited to the number of attendees and number and types of certificates, pass/failure rates for all programs including GEDs, and such other information that JEDO and GO TOPEKA may deem important. This information shall not include confidential or personal information, such as the names of students.

Section 26. TUITION. Tuition set for programs and services at the ETLC shall be consistent with tuition charged by WASHBURN TECH at its other location(s).

Section 27. REIMBURSEMENT. For the first three academic years (July to June) WASHBURN TECH shall send bills for its operations at the ETLC to GO TOPEKA on a quarterly basis. GO TOPEKA will review and verify the bills in a timely manner and, upon verification, will reimburse the same up to Five Hundred Thousand Dollars (\$500,000) per academic year, but only for the first three academic years. In no event shall the total reimbursement by GO TOPEKA pursuant to this Agreement exceed One Million Five Hundred Thousand Dollars (\$1,500,000). These reimbursement amounts shall only be for expenditures incurred at or through the ETLC. GO TOPEKA's sole obligation under this Agreement is to make the reimbursements; provided, however, that in the event GO TOPEKA is no longer an economic contractor for JEDO and/or is not sufficiently funded or authorized by JEDO to make the reimbursements, JEDO or its assigns shall succeed to this obligation and GO TOPEKA shall be released, without liability from this obligation.

Section 28. INSURANCE. WASHBURN TECH shall maintain the same types,

quality and amounts of insurance related to the ETLC programming as it maintains at its other campuses, and shall have all such insurance as may be required by law.

GENERAL

Section 29. REPRESENTATIONS AND WARRANTIES.

29.1 WASHBURN TECH warrants and represents that:

29.1.1 it legally exists under the laws of Kansas; and

29.1.2 it has power and authority to perform its duties under this Agreement.

29.2 JEDO warrants and represents that:

29.2.1 it legally exists under the laws of Kansas; and

29.2.2 it has power and authority to perform its duties under this Agreement.

Section 30. INDEMNIFICATION.

Section 30.1 WASHBURN TECH shall promptly indemnify, defend and hold harmless JEDO, GO TOPEKA and their respective officers, board members, employees, agents and successors and assigns from and against any and all claims arising out of the rendering of Services by WASHBURN TECH or any WASHBURN TECH personnel, or this Agreement, the breach of any representation or warranty made by WASHBURN TECH in this Agreement and/or any negligent or willful act and/or omission of WASHBURN TECH (collectively (“Claim” or “Claims”).

Section 30.2 The party seeking indemnity shall promptly notify WASHBURN TECH of the existence of any third-party Claim giving rise to a claim for indemnification under this Section 30.1 and shall give WASHBURN TECH a reasonable opportunity to

defend the same at its own expense and with its own counsel, provided that (a) the indemnified party shall at all times have the right to participate in such defense at its own expense and (b) WASHBURN TECH shall not settle a Claim without the applicable Indemnitees' prior written approval. If, within a reasonable time after receipt of notice of a Claim, WASHBURN TECH fails to undertake to so defend, the applicable indemnitee shall have the right, but not the obligation, to defend and to compromise or settle (exercising reasonable business judgment) the Claim for the account and at the risk and expense of WASHBURN TECH. The indemnitee shall make available to WASHBURN TECH, at the latter's expense, such information and assistance as the latter may reasonably request in connection with the defense of the Claim.

Section 30.3 JEDO shall promptly indemnify, defend and hold harmless WASHBURN TECH and its respective officers, board members, employees, agents and successors and assigns from and against any and all claims arising from conditions of the ETLC premises related to work performed before WASHBURN TECH takes possession of the ETLC or from subsequent repairs or replacements by JEDO pursuant to Section 10 above or from any remediation and/or abatement of any environmental hazards pursuant to Section 20 above, (collectively "JEDO Claim" or "JEDO Claims") to the extent any such third-party JEDO Claims arise.

Section 30.4 WASHBURN TECH shall promptly notify JEDO of the existence of any JEDO Claims giving rise to a claim for indemnification under Section 30.3 and shall give JEDO a reasonable opportunity to defend the same at its own expense and with its own counsel, provided that (a) WASHBURN TECH shall at all times have the right to participate in such defense at its own expense and (b) JEDO shall not settle a claim

without WASHBURN TECH'S prior written approval. If, within a reasonable time after receipt of notice of a JEDO Claim, JEDO fails to undertake to so defend, WASHBURN TECH shall have the right, but not the obligation, to defend and to compromise or settle (exercising reasonable business judgment) the claim for the account and at the risk and expense of JEDO. WASHBURN TECH shall make available to JEDO, at the latter's expense, such information and assistance as the latter may reasonably request in connection with the defense of a JEDO Claim.

Section 30.5 Notwithstanding any other provision of this Agreement the parties acknowledge that WASHBURN TECH and JEDO's indemnification and hold harmless obligations are limited by and subject to the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

Section 31. NOTICES. Any notices required or given in regard to this Agreement shall be in writing and sent by Registered or Certified Mail to the following addresses:

WASHBURN TECH:
Vice-President for Administration and Treasurer
1700 SW College Avenue
Topeka, KS 66621

JEDO:
c/o City of Topeka
City Clerk
215 S.E. 7th
Topeka, KS 66603

GO TOPEKA:
120 S.E. 6th Avenue
Topeka, KS 66603

or to such other addresses as the parties may subsequently direct by written notice.

Section 32. HEADINGS. The paragraph headings as to the contents of particular

paragraphs herein are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

Section 33. RELATIONSHIP. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, or giving any party a beneficial interest in the operations of any other party.

Section 34. DEFAULT. WASHBURN TECH covenants with JEDO that if the rent or any part thereof is not paid when it becomes due, or if WASHBURN TECH shall violate or neglect any covenant, agreement or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice thereof is given by JEDO to WASHBURN TECH, then, in addition to the other remedies or courses of action now or hereafter provided by law, including to seek injunctive or specific performance, JEDO may at its option terminate this Agreement, enter and take possession of the ETLC, and remove all persons, furniture, fixtures and equipment from the ETLC at the expense of WASHBURN TECH in order to recover at once full and exclusive possession of the ETLC and such entry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by WASHBURN TECH of any covenant or agreement on its part to be performed.

Section 35. FURTHER LIMITATION OF LIABILITY. Except in the case of a party's gross negligence or willful misconduct, no party shall be liable to another party(ies) for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation damages for lost profits, advantage, savings or revenues or for increased costs of operations. The limitation of liability in the preceding sentence shall not apply to third party

claims for which a party has an indemnification obligation.

Section 36. MISCELLANEOUS.

Section 36.1 This Agreement may be amended only in writing, duly executed by all Parties.

Section 36.2 This Agreement shall be interpreted under the laws of the State of Kansas. In the event any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.

Section 36.3 The Parties acknowledge and agree that WASHBURN TECH shall not assign, transfer, hypothecate or otherwise encumber this Agreement and its rights hereunder without the prior written approval of the other Parties.

Section 36.4 This Agreement shall be binding upon and inure to the benefit of the Parties, their representatives and successors.

Section 36.5 No failure by a Party to insist on prompt performance by another Party of its obligations hereunder shall constitute a waiver of rights under this Agreement. Similarly, the waiver by a Party of any breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

Section 36.6 The parties shall comply with all applicable federal and state laws prohibiting unlawful discriminatory practices.

Section 36.7 Time is of the essence in the performance of each obligation under this Agreement.

Section 36.8 There shall be no third party beneficiaries to this Agreement, and no entity other than JEDO, GO TOPEKA and WASHBURN TECH shall have any rights

under this Agreement.

Section 36.9 This Agreement may be executed in counterparts, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties. Moreover, the Agreement may be signed by faxed or electronic signature, which shall be deemed to be an original signature.

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

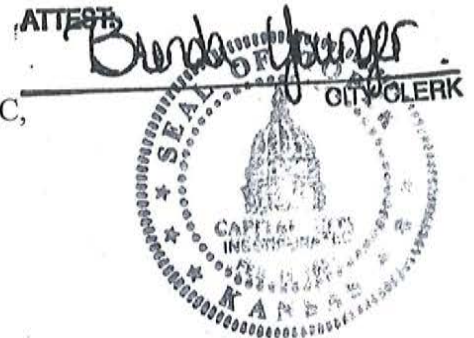
JOINT ECONOMIC DEVELOPMENT ORGANIZATION
OF TOPEKA AND SHAWNEE COUNTY, KANSAS

BY: Larry E. Wolgast
Larry E. Wolgast, Chair



GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC,

BY: [Signature]
Matt Pivarnik, President/CEO



WASHBURN INSTITUTE of TECHNOLOGY through WASHBURN UNIVERSITY

BY: [Signature]
Dr. Jerry Farley
President, Washburn University

