

COLVIN LEASE AGREEMENT

THIS AGREEMENT is made and entered into on this 26th day of July, 2006, by and between Unified School District No. 259, Sedgwick County, Kansas, a unified school district operating and existing under the laws of the State of Kansas ("Lessor") and Sedgwick County, Kansas, a municipal corporation ("Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of the following described real property, to wit:

LOT 1 EXC BEG SELY COR LOT 10 BLK S PLANEVIEW SUB NO. 1 SE 86.37 FT TO SWLY COR LOT 12 BLK S SW 173.2 FT TO SLY COR LOT 5 BLK S NE 81.78 FT NLY 108.49 FT TO NE COR LOT 5 BLK SELY 51.82 FT TO BEG & EXC BEG SLY MOST COR LOT 1 NW ALG SW LI LOT 1 424.15 FT NE 239.62 FT ELY 278.36 FT TO PT ON SE LI 400 FT NE OF BEG TH SW 400 FT TO BEG PLANEVIEW SCHOOL ADD, WICHITA, SEDGWICK COUNTY, KANSAS (the "Real Property").

WHEREAS, Lessor operates and maintains Colvin Elementary School, a public school (the "Colvin School") that consists of approximately 78,067 square feet, upon the Real Property; and

WHEREAS, the parties hereto desire to enter into this Lease Agreement for purposes of Lessee leasing certain space within Colvin School as described hereafter for purposes set forth hereafter.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions, covenants and agreements recited herein, the parties hereto do hereby agree as follows:

1. Premises. Lessor hereby leases to Lessee, upon and subject to the terms, conditions, covenants and agreements set forth in this Lease, approximately 2,850 square feet (the square footage being calculated as shown on Attachment "A" that is made a part hereof as though fully set forth herein (the "Premises") within the Colvin School. The location of the Premises within the Colvin School is shown on Attachment "B" hereto which is made a part hereof as though fully set forth herein. The use and occupation of the Premises by Lessee includes Lessee's right to use in common with the Lessor and others the space described and identified in Attachment "B" as common area ("Common Area"). For purposes herein it is agreed that Lessee's Premises (including the sharing of the Common Area) equals 3.65% (Usable Pro-Rata Share) of the Colvin School.
2. Term. The initial term of the Lease shall be five (5) years (the "Initial Term") commencing on the 1st day of January, 2006 ("Commencement Date") and ending at midnight on the 31st day of December, 2010.

3. Extended Term. This Lease, at the end of the Initial Term, shall continue for five (5) one (1) year periods unless either party hereto provides the other party at least two hundred seventy (270) days written notice of its intention to non-renew prior to the end of the Initial Term or any Extended Term.

4. Rent.

a. For purposes of this Lease, the following words and terms shall have the following meanings:

“Operating Cost” means the cost of providing utilities, custodial maintenance repairs and insurance for Colvin School.

“Utilities” means and includes costs of providing water, gas, electrical and trash at Colvin School.

“Custodial” means weighted labor for providing custodial services, cleaning supplies and paper supplies at Colvin School.

“Repair and Maintenance” means maintaining and repairing roof, electrical, HVAC, glass, parking, lighting and lighting control, flooring and other building repair and maintenance at Colvin School.

“Insurance” means the cost incurred by Lessor to insure Colvin School and contents as required in Section 20 herein.

“Base Rent” means Operating Costs for the period of time beginning July 1 and ending June 30, that precede the upcoming Term that Base Rent will apply to times Usable Pro-Rata Share, e.g., Base Rent for the Extended Term beginning September 1, 2005 and ending August 31, 2006, equals Operating Cost between July 1, 2004 and June 30, 2005, times Usable Pro-Rata Share.

“Additional Rent” means Operating Cost beginning July 1 and ending June 30 times Usable Pro-Rata Share minus Base Rent for the Term that the June 30 ending date falls within, e.g., Additional Rent for the Initial Term equals Operating Cost beginning July 1, 2004 and ending June 30, 2005 minus Base Rent for the Initial Term.

b. Lessee, on an annual basis, shall pay Base Rent and Additional Rent. Base Rent shall be payable on a pro-rata basis spread over a twelve (12) month period with the first payment being due on the first day of each month beginning the first day of the first month of the Initial Term and on the first day of each month thereafter during the Initial Term and any

Extended Term. Base Rent for the Initial Term is Thirteen Thousand One Hundred Thirty-Seven Dollars and Eighty-Four Cents (\$13,137.84) or One Thousand Ninety-Four Dollars and Eighty-Two Cents (\$1,094.82) per month. Lessor, during the Initial Term and any Extended Term of this Lease, shall, in writing, give Lessee notice of the amount of Operating Cost for the previous July 1 and June 30 period by August 15 of each year. The amount of Operating Cost given to Lessee on each August 15 shall be used to calculate additional Rent for the then Term and shall be used to calculate Base rent for the upcoming term. If Additional Rent is a positive amount, then Lessee shall pay the Additional Rent by the upcoming August 31. If Additional Rent is a negative amount, then Lessor shall pay Lessee the difference on or before the upcoming August 31. At Lessee's request, Lessor shall provide Lessee with invoices and other documentation that Lessor used to calculate Operating Costs.

c. *Past Rent.*

- (1) Lessee shall, within thirty (30) days of execution of the Lease, pay Lessor any amounts owed as past rent for occupancy of the Premises subsequent to the Commencement date, but prior to the execution of this lease.
- (2) The parties acknowledge that Lessee has occupied the premises since May 1, 2002, and that during the period of time Lessee has not paid rent to Lessor. Lessee agrees that it owes Lessor back rent from its occupancy of the Premises during the period of time between May 1, 2002, and December 31, 2005, which amount of such back rent has not been agreed to by the parties. As to this back rent the parties agree to enter into good faith negotiations with each other to negotiate a fair and reasonable payment of back rent between the period of May 1, 2002, and December 31, 2005, which negotiations shall be completed and back rent shall be paid to the Lessor within six (6) months of the date first written above. The parties shall calculate back rent by using the Base Rent concept as that term is defined at Section 4a of this Agreement.

5. Lease.

- a. The Premises shall be used solely for governmental purposes related to functions that Lessee, as a municipality, provides to the public. Lessee agrees that it will not use, or permit or suffer the use of the Premises, or any part thereof for any other business or purpose.
- b. Lessee further agrees that in the use and occupancy of the Premises and in the prosecution or conduct of its business therein, Lessee will comply with

all requirements of laws, ordinances, orders and regulations of the federal, state, county and municipal authorities now in force, or which hereinafter may be in force. Lessee covenants and agrees that it will not use, permit to be used, any part of the Premises for any dangerous, noxious or offensive trade or business and will not cause or maintain any nuisance in or on the Premises, Colvin School or the Real Property.

- c. Lessee shall not obstruct the Common Area and shall refrain from committing any act or thing upon the Premises or Real Property which disturbs the quiet enjoyment of Lessor's use and occupancy of the Colvin School, including use by Lessor's administrators, teachers, students and others.
 - d. Lessee shall not permit the accumulation of rubbish, trash, garbage or other refuse in or around the Premises or Real Property. Garbage and trash receptacles may be placed only in areas designated by Lessor and Lessor shall have the right to designate and control the type and size of such garbage and trash receptacles that may be used by Lessee.
 - e. Lessee shall at all times during the term of this Lease, observe and comply with any rules, regulations and covenants which may be adopted and amended from time to time by Lessor for the safety, care and cleanliness of the Real Property, Colvin School and Premises.
6. Lessee's Rights in Common Area. Lessor hereby grants to Lessee, its official, licensees, invitees, customers, employees and agents, during the Term, the non-exclusive right to use the Common Area as depicted in Attachment "B" in common with Lessee and lessors of the Colvin School and their respective officials, licensees, invitees, customers, employees and agents, subject to the provisions of this Lease. Lessee shall not exact any charge, or permit others to exact any charge, for use of the Common Area from Lessor or its officials, licensees, invitees, customers, employees and agents, or from any other lessor or from any sublessor, invitee, customer, employee, of such other lessor.
7. Use of Areas Other Than Premises and Common Area Not Allowed. Lessee shall not use, occupy or allow others to use or occupy any part of the Colvin School other than the Premises and Common Area. The use and occupancy of the Premises and Common Area shall be subject to terms and conditions set forth herein.
8. Parking of Cars. Lessee, its employees, and members of the public who come to the Premises to receive services from Lessee shall park their cars in areas designated by the Lessor, from time to time and shall not park cars in areas not so designated.

9. Utilities. Lessor will provide water, gas, electricity and trash services to the Premises. Lessee will provide telephone services at Lessee's sole cost and expense, including maintenance and replacement of the telephones. Lessor shall not be liable to Lessee for interference in or interruption of any utility service, nor shall any curtailment or interruption constitute a constructive eviction or grounds for rental abatement in whole or in part hereunder.
10. Assignment and Subletting. Except upon written consent of Lessor, which Lessor can grant or deny at Lessor's sole discretion, Lessee cannot assign this Lease or sublet all or any part of the Premises.
11. Legal Requirements. Lessee promptly will comply with all legal requirements affecting the Premises, compliance with which is necessary by reason of the nature of Lessee's use. Lessee, at Lessee's sole expense and on behalf of itself and Lessor, may contest any such legal requirements. In such event, Lessor may permit the contested legal requirements to remain unsatisfied during the period of such contest.
12. Repairs by Lessor. Lessor, at Lessor's sole cost and expense, during the term of the Lease, shall keep and maintain in good order, condition and repair, the Premises and Common Area. Lessor shall cause the Premises and Common Area to be maintained in such a manner that they comply, at all times during the term of this Lease, with all applicable laws, ordinances, statutes, regulations, orders and codes. Lessee shall be responsible for maintenance, repair or replacement necessitated by the negligence or misconduct of Lessee, its employees, agents, licensees or invitees.
13. Improvements and Alterations. Lessee shall make no material changes or alterations to the Premises unless permission to make the changes and alterations has first been obtained from Lessor by written consent.

All improvements which are not fixtures and which are not specifically identified as belonging to Lessor shall remain the property of Lessee. At the termination of this Lease, the Lessee shall have the option of removing all such fixtures and leasehold improvements belonging to Lessee and restoring the Premises to their original condition, less ordinary wear and tear; or with the consent of Lessor may leave said fixtures and leasehold improvements in place. In the event that said fixtures and leasehold improvements are not removed within fifteen (15) days after the termination of this Lease, Lessor shall have the option of taking title to all such fixtures and leasehold improvements immediately.

14. Surrender and Removal of Property. Upon the expiration or the earlier termination of this Lease, Lessee will surrender the Premises to Lessor in substantially the same condition that they were in on the Commencement Date, normal wear and tear, depreciation and obsolescence, alterations acceptable to

Lessor. Lessee will leave the alterations acceptable to Lessor, and title to the same then will pass to Lessor. Lessee will, at Lessor's option, remove all signs, trade fixtures and personal property installed in or placed on or about the Premises by Lessee, in which event Lessee will repair any resulting damage to the Premises.

15. Event of Casualty. In the event the improvements on the Premises shall be damaged or destroyed by casualty as to become untenable, then Lessor may, if Lessor so elects, give notice in writing terminating this Lease upon proper notice.
16. Destruction. In the event of the destruction of the building containing said Premises by fire, windstorm or other cause, this Lease shall immediately terminate and cease and Lessor shall, within thirty (30) days thereafter, notify Lessee in writing of Lessor's desire to continue said Lease, in which event Lessor shall be obligated to restore the building, due in reasonable time, to substantially its former condition except as to any property owned by Lessee therein. In that event the rent shall be abated until the Premises are restored to conditions for occupancy. Slight or partial damage by fire, windstorm or other cause, which does not render the building substantially unfit for use and occupancy, shall not affect the terms of this Lease.
17. Event of Default. The following shall be considered, for all purposes, to be defaults under and breaches of this Lease by Lessee:
 - a. Any failure to pay any rent installment and such failure shall continue for a period of ten (10) days after the date such rent is due.
 - b. Failure of Lessee to perform or observe any of the terms, provisions, conditions and covenants of this Lease, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to Lessee.
 - c. If Lessee abandons or vacates any substantial portion of the Premises for a period of ten (10) days or more.
 - d. The Premises come into the hands of any person other than is expressly permitted under this Lease.
18. Termination. The Lease shall terminate without further required notice upon the occurrence of any of the following:
 - a. The expiration of the Lease Term or any Extended Term or other extension thereof.

- b. Any default or breach of any covenants and provisions of the Lease by the Lessee and failure to cure such breach by Lessee after notice period identified herein above in Section 17, in which case the Lessor shall be entitled to possession of the Premises and Lessor may disclaim for rent due and damages and recover possession of said Premises as provided by law.
 - c. Upon two hundred seventy (270) days after declaration by Lessor that the Premises is needed for a public purpose.
19. Lessee's Indemnification and Nonliability of Lessor. Lessor shall not be liable to Lessee or to Lessee's employees, patrons, guests or visitors in or upon the Premises for any damage to person or property directly caused by the negligence of Lessee, the Lessee's agents, employees, or invitees.

Lessee shall not be liable to Lessor or to Lessor's employees, students, agents, patrons, guests or visitors in or upon the Premises for any damage to person or property directly caused by the negligence of Lessor, Lessor's agents, employees or invitees.

Lessee agrees to save and hold Lessor harmless from any claims, including attorney fees, arising from acts or acts or omission or omissions of Lessee or Lessee's officers, agents, servants, customers or employees arising during Lessee's occupancy of the Premises.

Lessor agrees to save and hold Lessee harmless from any claims, including attorney fees, arising from acts or acts or omission or omissions of Lessor or Lessor's officers, agents, servants, customers or employees arising during Lessee's occupancy of the Premises.

Lessor shall not be liable or responsible for any loss or damage to any Sedgwick County property or employees occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection war court order, requisition order of government body or authority or other matter beyond the reasonable control of Lessor, or for any damage or inconvenience which may arise through repair or alteration of any part of the Colvin School, or failure to make repairs, or for any cause whatever except Lessor's negligence.

20. Liability Insurance.

- a. During the term of this Lease, Lessor shall keep all buildings and improvements erected on the Premises at any time insured, for the benefit of Lessor, against loss or damage by fire and customary extended coverage in amounts and with companies acceptable to Lessor. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to Lessor. Such policy may be

subject to a deductible in an amount deemed appropriate by Lessor, which at the present time is One Hundred Thousand Dollars (\$100,000.00) per event.

- b. Lessee shall secure and maintain at its sole expense a general liability insurance policy in an insurance company or companies licensed to do business in the State of Kansas selected by Lessee, that includes losses of whatsoever kind arising from Lessee's occupancy and operation of the Premises and Common Area in an amount not less than the maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas Tort Claims Act or other similar future law (currently \$500,000 per occurrence) which policy shall provide that such insurance may not be canceled by Lessee without at least thirty (30) days advance written notice to Lessee and Lessor. Such insurance shall be maintained throughout the term of this Lease or any renewal, and must name Lessor as an additional insured. As an alternative, Lessee may provide such insurance through an appropriately funded self-insurance program.
 - c. Lessee shall provide such insurance as it desires on its equipment, fixtures and furnishings. All proceeds of such policies shall be payable and belong to Lessee.
 - d. Certificates of insurance evidencing the insurance required hereunder or proof of self-insurance shall be provided by the parties to each other.
21. Waiver of Subrogation. All insurance policies carried by either Lessee or Lessor covering the Premises shall expressly waive any right on the part of the insurer against the other party.
22. Time of Essence. Time is of the essence of this Lease.
23. Notices. Each notice ("Notice") provided for under this Lease must comply with the requirements of this paragraph. Each Notice shall be in writing and sent by nationally recognized overnight courier, or by depositing it with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed to the appropriate party as hereinafter provided. Each Notice shall be effective upon being so deposited, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by actual receipt, if by overnight delivery, the return receipt, if by certified mail. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any party shall have the right from time to time to change the address or individual's attention to which Notices to it shall be sent

(provided such address is not changed to a post office box) by giving to the other party at least ten (10) days prior notice thereof. The addresses of the parties shall be those set forth below:

Lessor: Unified School District No. 259, Sedgwick County, Kansas
Alvin E. Morris Administrative Center
201 North Water
Wichita, Kansas 67202-1292
Attention: Clerk of the Board

Lessee: Project Services
Attention: Contract Notification
538 N. Main
Wichita, Kansas 67203

and

Office of the Sedgwick County Counselor
Attention: Contract Notification
525 N. Main, Suite 359
Wichita, Kansas 67203

24. Cash Basis Law. Lessor acknowledges and agrees that the indebtedness or obligation related under this Lease, or any addendum or addenda hereto, is subject to the Kansas Budget Law, K.S.A. 79-2925, et seq., and to the Kansas cash Basis Law, K.S.A. 10-1101, et seq., and as such, it is agreed that:

- a. Lessee is obligated only to pay periodic payments or monthly installments as may lawfully be paid from either:
 - (1) funds budgeted and appropriated for that purpose during the Lessee's current budget year; or,
 - (2) funds made available from any lawfully operated revenue producing source.
- b. Lessee does not guarantee that unbudgeted funds will be made available for payment of the above-reference obligations. In the event such funds are not budgeted, then this lease and any addenda shall terminate effective December 31 of the year in which such budget is approved and Lessee shall not be obligated to pay any further amounts hereunder. Lessee does agree to use good faith in securing availability of future funding. Lessee further agrees to notify Lessor that funds were not budgeted for an upcoming year not less than thirty (30) days from the date a budget for an upcoming year is approved that does not include such funds.

25. EPA. Lessor will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not

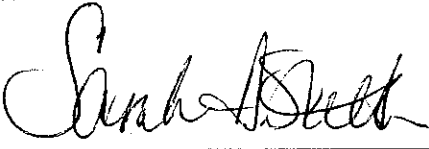
listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify Lessee and the State of Kansas of the receipt of any communication from the director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for such listing by the EPA.

26. Rehabilitation Act. Lessor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Lessor shall also comply with all applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs. Lessor acknowledges its responsibility to comply with all applicable laws and regulations with respect to the ADA and will be responsible for the cost of such requirements for all exterior areas of the Building and all interior common areas of the Building, including restrooms, hallways, lobby areas, and elevators.
27. Entire Agreement. The Lease contains the entire agreement of Lessor and Lessee, and no other matters or agreements between the parties, either oral or written, will be of any effect.
28. Quiet Enjoyment. Lessor warrants that it has good and indefeasible fee simple title to the Colvin School, including the Premises, subject to easements and restrictions of record, and has the lawful authority to enter into this Lease. Lessor further warrants that Lessee, subject to the terms and conditions of this Lease and easements and restrictions of record, will peaceably and quietly hold and enjoy the Premises and use the Common Area during the Term without hindrance or interruption by anyone claiming by, through or under Lessor, so long as no Default by Lessee shall occur.
29. Force Majeure. Except for payment of Rent, CAM Costs, Taxes and Insurance in the event that Lessor or Lessee shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this Lease to be performed by either Lessor or Lessee and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restriction, enemy act, civil commotion, unavoidable fire or other casualty, or other cause of a like nature beyond the reasonable control of Lessor or Lessee, then performance of such work, service, or other act shall be excused for the period of such delay, and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay.

30. Governing Law. This Lease is to be governed by and construed under the laws of the State of Kansas.
31. Severability. If any one or more of the provisions in this Lease are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceability will not affect any other provision of the Lease, which will be construed as if it had not affect any other provision of the Lease, which will be construed as if it had not included the invalid, illegal or unenforceable provision.
32. Miscellaneous.
- a. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
 - b. The failure of either party to seek redress for violation of, or to insist upon strict performance of any term, covenant, condition or provision contained in this Lease, shall not prevent a similar subsequent act from constituting a default under this Lease.
 - c. Lessor and Lessee represent to each other that no broker or person is entitled to any commission by reason of the negotiation and execution of this Lease. Lessor and Lessee agree to hold each other harmless against any and all claims by any person for brokerage commissions arising out of any conversation, negotiations or other dealings held by the other party with any broker regarding this Lease.
 - d. This instrument contains the entire agreement and only agreement between the parties relating to the subject matter hereof, and no oral statements or representations or written matter contained in this instrument shall have any force or effect. This Lease shall not be amended or modified in any way except by a writing executed by both parties.
 - e. The relationship between the parties hereto is solely that of Lessor and Lessee, and nothing in this Lease shall be construed as creating a partnership or joint venture between the parties hereto, it being the express intent of Lessor and Lessee that the business of Lessee on the Premises and elsewhere, and the good will thereof, shall be and remain the sole property of Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Lease this 26 day of July, 2006.

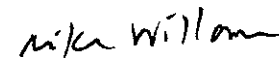
UNIFIED SCHOOL DISTRICT No. 259:

By: 
SARAH SKELTON
President of the Board of Education


SEDGWICK COUNTY, KANSAS:

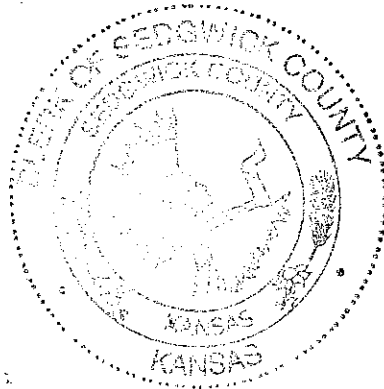
By: 
BEN SCIORTINO, Chairman
Board of County Commissioners

ATTEST:

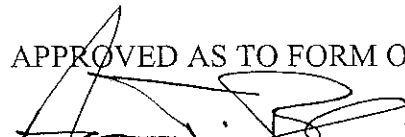

MIKE WILLOME, Clerk of the Board

ATTEST:

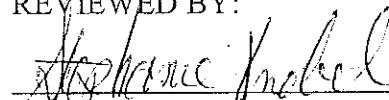

DON BRACE, County Clerk



APPROVED AS TO FORM ONLY:

 7/17/06
AARON T. BLASE,
Assistant County Counselor

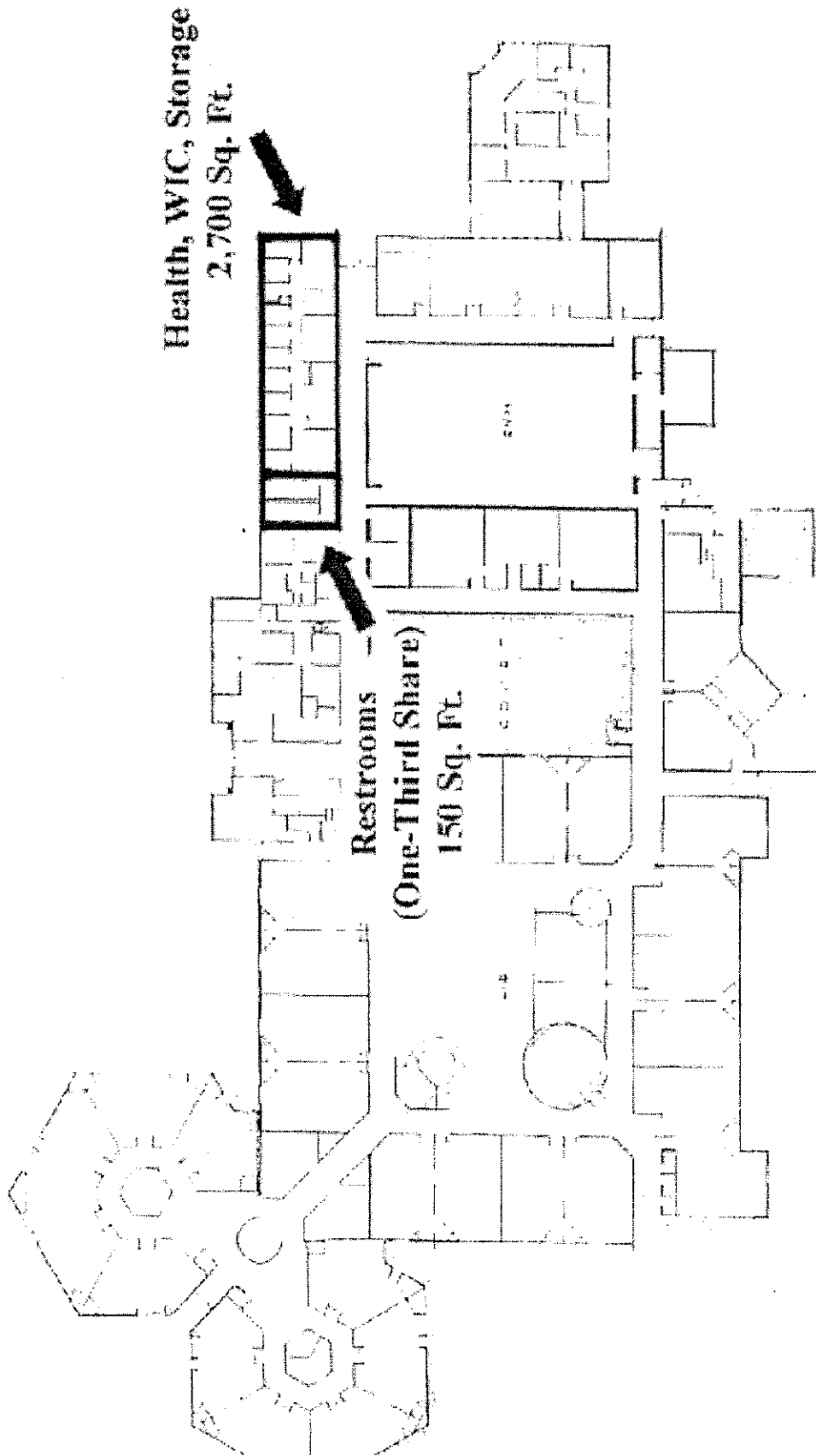
REVIEWED BY:


STEPHANIE KNEBEL
Project Services Director

Attachment "A"

County Health Offices, Rooms 100, 102, 104	2,700 square feet
Restroom, Room 106 (one-third share)	<u>150 square feet</u>
Total Occupied Square Footage	2,850 square feet

Sedgwick County Leased Space Floor Plan



Colvin Elementary School