

Culligan

better water. pure and simple.®

Commercial Lease Agreement

**Lessor: Kinzua Water Treatment, Inc
dba Culligan Water Conditioning**

207 E. 5th Ave, Warren, PA 16365

Lease No:

(Non-Cancelable)

LESSEE'S Name, Mailing Address and Contact Person Company Name: Warren County School District			Taxpayer's ID No. <u>25-1157816</u>		
Address: 6820 Market Street, Russel PA 16345			Contact Person: Boyd Freeborough		
Phone: 814-723-6900			Email: freeboroughb@wcsd.pa.org		
Fax:			Cell: 814-730-3070		
Equipment Address: 3700 Route 957 Russel, PA 16345					
Qty	Model	Year	Equipment Description	Product ID No.	
1	Duplex CTM	2019	Culligan CTM Duplex Water Conditioner		
No. Payments 36	Amount of Each Payment \$ <u>934.43</u> (plus applicable taxes)		Security Deposit \$1868.68	Documentation Fee	Payment due on ¹⁵ day of each month beginning <u>October</u> , 20 <u>19</u>
Date Term Begins <u>10/15/19</u>		Date Term Ends* <u>10/15/22</u>		*At end of the term the lease is automatically extended on a month-to-month basis. Lessee may terminate on or after the date the term ends by giving 30 days written notice to Lessor.	

THE PERSON(S) SIGNING THIS AGREEMENT ON BEHALF OF LESSEE REPRESENT THAT THEY HAVE THE AUTHORITY TO DO SO AND THAT INFORMATION SUPPLIED BY LESSEE IN CONNECTION HERewith IS NOT MISLEADING OR FALSE.

LESSEE APPLIES TO LESSOR FOR A LEASE OF THE ABOVE-DESCRIBED EQUIPMENT FOR COMMERCIAL PURPOSES AND AGREES THAT THIS LEASE IS NOT TO BE CONSTRUED AS A CONSUMER CONTRACT.

NOTICE: THE UNDERSIGNED DEALER HAS NO AUTHORITY TO MAKE ANY REPRESENTATION OR PROMISE ON BEHALF OF LESSOR OR TO MODIFY THE TERMS OF THIS LEASE IN ANY WAY.

Acceptance of Lease Agreement

The Undersigned acknowledge that he/she has read the provisions set forth on the reverse side of the document and agrees to be bound hereby. This is a binding contract and it's not subject cancellation.

Company Name (Lessee Print Name)

Print Name of Authorized Signer

Signature of Authorized Signer

10/5/19 Title

Date

Dealer:

Name: Kinzua Water Treatment

Signature

Date

Lessor:

dba Culligan Water Conditioning

Signature Authorized

10/5/19
Date

1. **SUMMARY.** Lessor hereby leases the above equipment (equipment) to Lessee for the term specified above. The term shall commence on the date an authorized employee of Lessee signs the lease. At the end of the term the lease will be renewed on a month-to-month basis unless Lessor or Lessee gives the other 30 days written notice of termination. The initial payment and security deposit shall be due at the signing of this lease. Subsequent monthly payments shall be made on the same day of each month thereafter, together with any late charges. Lease payments shall be due whether or not Lessee has received any notice that such payments are due. If the lease application is not accepted by Lessor, Lessor shall refund all prepayments and deposits received by Lessor.

2. **SECURITY DEPOSIT.** The security deposit shall be refunded to Lessee within n/a days after return of the equipment at the completion of the initial term or any renewal term.

3. **LATE CHARGES AND RETURNED CHECK FEES.** Lessee shall be charged a late payment fee of five dollars (\$5) for each payment that is received more than ten (10) days after its due date. Lessee shall pay a returned check fee of twenty-five dollars (\$25) for each check which is returned to Lessor by the financial institution as uncollectible for any reason. If any applicable state law limits Lessor's recovery as provided in this paragraph, Lessor shall be entitled to the maximum allowable fee under applicable law.

4. **CREDIT INFORMATION.** Lessee certifies that the application, statements, trade references and financial reports submitted by Lessee to Lessor are material inducements to the granting of this lease and that any material misrepresentation shall constitute a default under this lease.

5. **SELECTION AND ORDERING.** On Lessor's acceptance of this lease, Lessor agrees to order the equipment subject to the lease from the seller on the terms and conditions of the purchase order initially attached to this lease. Lessee authorizes Lessor to insert in this lease the serial numbers and other identification data of the equipment when made available to Lessor. Lessee acknowledges that Lessee has selected (a) the equipment and (b) the seller from whom Lessor is to purchase the equipment, and Lessee acknowledges that Lessor is neither a manufacturer nor a merchant and has made no recommendations with respect to the seller or the equipment.

6. **TAXES.** Lessee shall pay directly (or reimburse Lessor if so instructed by Lessor) all charges and taxes (local, state and federal) that may now or hereafter be imposed or levied on the sale, purchase, ownership, leasing or use of the equipment. This shall include, but not be limited to, all sales and use taxes and all personal property taxes. Proof of payment of such taxes shall be provided by Lessee to Lessor if Lessor so requests.

7. LOSS OR DAMAGE. Lessee assumes and shall bear the entire risk of loss, theft, destruction or damage of or to any part of the equipment ("loss or damage") from any cause whatsoever, whether or not covered by insurance, and no such loss shall release Lessee of its obligation under this agreement in the event of loss or damage. Lessee, at the sole option of Lessor, shall (a) at Lessee's expense, repair the equipment to the satisfaction of Lessor; or (b) at Lessee's expense, and to the satisfaction of Lessor, replace the equipment with similar or like equipment in good condition and repair and of comparable value, with clear title to be in the name of Lessor; or (c) make payment to Lessor in the total of the amounts specified below: (1) All lease payments past due or currently owed to Lessor under this lease, including unpaid taxes; and (2) All future lease payments that would accrue over the remaining term of this lease.

On Lessor's receipt of the payment specified by subsections (1) and (2) above, Lessee shall be entitled to whatever interest Lessor may have in such equipment, as is, where is, without warranty express or implied. The parties agree that the sum of the amount required by subsections (1) and (2) will equal the total amount payable to Lessor in the event of "loss or damage."

8. INDEMNITY. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney fees arising out of, connected with, or resulting from the equipment subject to this lease, including, but not limited to the manufacture, selection, delivery, use, operation or return of the equipment.

9. INSURANCE. Lessee shall provide, maintain and pay for insurance against the loss or theft of or damage to the equipment, for its full replacement value, naming Lessor as a loss payee. All insurance shall be in a form and amount and with companies satisfactory to Lessor and shall contain the insurer's agreement to give fifteen (15) days written notice to Lessor before cancellation or material change of the policy of insurance. On Lessor's request, Lessee shall deliver the policies or copies of the policies or certificates of insurance to Lessor.

10. ASSIGNABILITY. Without Lessor's prior written consent, Lessee shall not (a) assign, transfer, pledge or otherwise dispose of this lease, the equipment or any interest therein or (b) sublet or lend the equipment or permit it to be used by anyone other than Lessee or Lessee's employees.

Lessor may assign this lease or grant a security interest in the equipment in whole or part without notice to Lessee and Lessor's assignee. A secured party may assign this lease or the security agreement without notice to Lessee. Each such assignee or secured party shall have all the rights, but none of the obligations, of Lessor under this lease. Lessee shall recognize such assignments or security agreements and shall not assert against the assignees or the secured parties any defense, counterclaim or offset Lessee may have against Lessor. In spite of any such assignment, Lessor warrants that Lessee shall quietly enjoy use of the equipment, subject to the terms and conditions of this lease. Subject to the foregoing, this lease inures to the benefit of and is binding on the respective heirs, personal representatives, successors and assigns of Lessor and Lessee.

11. LOCATION AND MAINTENANCE. At Lessee's own risk, Lessee shall use or permit the use of the equipment solely at the location specified in this lease, or if none is specified, at Lessee's billing address set forth above, and the equipment shall not be moved without Lessor's prior written consent. Lessee, at Lessee's expense, shall maintain the equipment in good repair, condition and functional order, shall not use the equipment unlawfully, and shall not alter the equipment without Lessor's prior written consent. Lessor shall not be liable for loss of profit or other consequential damages resulting from the theft, destruction or disrepair of the equipment and there shall be no abatement of lease payments on account of any such theft, destruction or disrepair.

12. SURRENDER. On the expiration of the lease term or on demand by Lessor pursuant to this Section, Lessee, at Lessee's expense, shall return the equipment in good repair, ordinary wear and tear resulting from careful use excepted, to the place or on board the carrier, packed for shipping and insured, as Lessor may specify.

13. TITLE; PERSONAL PROPERTY. The equipment is, and shall at all times remain, property of Lessor, and Lessee shall have no right, title or interest except as expressly set forth in this lease. The equipment is and shall at all times be and remain the personal property although the equipment or any part of it may now be or hereafter become in any manner affixed or attached to real property or any improvements. All additions or improvements to the equipment of any kind or nature made by Lessee shall become component parts of the equipment, and title shall immediately vest in Lessor and be governed by the terms of this lease.

14. DEFAULT AND REMEDIES.

(a) Lessee shall be in default under this lease if Lessee shall: (1) Fail to pay any lease payments, the payments on any other lease or indebtedness of Lessee to Lessor arising independently of this lease, or other amount required in this lease within ten (10) days after the lease payment becomes due and payable; (2) Fail to perform or observe according to its terms any covenant contained in this lease, or any other instrument or document executed in connection with this lease; (3) Become insolvent (however defined), cease business as a going concern, make an assignment for the benefit of creditors, or cause a petition for receiver or in bankruptcy to be filed by or against Lessee (including a petition for reorganization or an arrangement); or (4) Commit or fail to commit any act that results in jeopardizing the rights of Lessor or causes Lessor to deem itself insecure as to its rights.

(b) If Lessee is in default under this lease, Lessor, with or without notice to Lessee, shall have the right to exercise concurrently or separately, and without any election of remedies to be deemed made, the following remedies: (1) Elect that the lease payments due be accelerated and the entire amount of lease payments be due immediately; (2) Terminate this lease; (3) Enter on Lessee's premises and without any court order or other process of law to repossess and remove the equipment, whether with or without notice to Lessee; any such repossession shall not constitute a termination of this lease unless Lessor so notifies Lessee in writing, and Lessor shall have the right, at its option, to lease the equipment to any other person or persons on such terms and conditions as Lessor shall determine; or (4) Sell the equipment to the highest bidder at public or private sale, at which sale Lessor may be the purchaser.

In the event either sub-sections (3) or (4) are exercised, there shall be due from Lessee, and Lessee will immediately pay to Lessor, the difference between the total amount of lease payments to be received from any third person or the purchase price at such sale, as the case may be, and the total unpaid lease payments provided to be paid, together with the estimated fair market value of the equipment for the original lease termination date, plus all costs and expenses of Lessor in repossessing, releasing, transporting, repairing, selling or otherwise handling the equipment.

15. NOTICES AND DEMANDS. Service of all notices under this agreement shall be sent by United States registered or certified mail addressed to the party involved at its respective address set forth above or to such other address as the parties may hereafter substitute by written notice.

16. FILING. Lessee, on request, agrees to execute any instrument necessary to the filing and recording of this lease agreement or the equipment. Lessee further appoints Lessor its true and lawful attorney to prepare, execute and sign any and all security agreements, financing statements or otherwise, in order to effectuate a lien on the equipment subject to this lease, and to sign the name of Lessee with the same force and effect as if signed by Lessee and to file such instruments at the proper location or locations.

17. SERVICE CHARGE AND/OR INTEREST. If any lease payments are not paid within ten (10) days after its due date, Lessee shall pay to Lessor a service charge together with any expenses incurred in collecting the late payment. Lessee shall also pay interest on any late payment from the due date until payment at a rate up to the maximum rate allowed by law.

18. SECURITY DEPOSIT. Any security deposit made pursuant to this lease may be applied by Lessor to cure any default by Lessee of any indebtedness to Lessor and Lessee shall promptly restore the security deposit to the full original amount. No interest shall be paid by Lessor on any security deposit which Lessor holds. The security deposit shall be refunded upon return of all equipment in good and operative condition, ordinary wear and tear resulting from careful use excepted.

19. TAX CONSEQUENCES. Lessor assumes no liability and makes no representation as to the treatment of this lease agreement by any federal, state or local taxation authority.

20. ARBITRATION. Any controversy or claim arising out of or relating to this lease or its breach shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Arbitration shall be held in the City of Wausau, County of Marathon, State of Wisconsin, and any question of law shall be decided in accordance with the laws of the State of Wisconsin.

21. WARRANTIES. Lessor does not warrant the fitness, merchantability, design, condition, capacity, suitability or performance of the equipment. Lessor makes no express or implied warranties and leases the equipment "as is" and "with all faults". Warranties made by the seller and/or manufacturer of the equipment are assigned by Lessor to Lessee to the extent permitted. In event of any claim concerning the location, installation, repair or use of the equipment or any other claim concerning the equipment, regardless of cause or consequence, Lessee's only remedy, if any, is against the seller or manufacturer of the equipment. No defect regardless the cause or consequence shall relieve Lessee from performance under this lease, including lease payments.

22. COMMERCIAL PURPOSES ONLY. Lessee warrants and represents to Lessor that the equipment is and shall continue to be used exclusively for commercial purposes.

23. COLLECTION COSTS. Lessee agrees to pay all costs of Lessor, including reasonable attorney fees, arbitration costs and court costs, incurred by Lessor in enforcing the terms of this lease.

24. MISCELLANEOUS. This lease constitutes the entire agreement between Lessor and Lessee and is irrevocable for its term and for the aggregate lease payments reserved above, and it shall not be amended, altered or changed except by a written agreement signed by the parties. Lessee shall provide Lessor with any corporate resolutions, opinions of counsel, financial statements and other documents (including UCC Financing Statements and other documents for filing or recording) as Lessor shall request from time to time. If more than one Lessee is named in this lease the liability shall be joint and several. Time is of the essence for this lease. Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any provision of this lease shall not be construed as a consent or waiver of any other breach of the same or any other provision. If any portion of this lease is deemed to be invalid, it shall not affect the remaining provisions of this lease. Headings or titles to the paragraphs of this lease are solely for the convenience of the parties and not an aid to the interpretation of this agreement.

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM, entered into this 7th day of October, 2019, is made between

WARREN COUNTY SCHOOL DISTRICT (LESSEE)

AND

**KINZUA WATER TREATMENT (DEALER) and CULLIGAN WATER
CONDITIONING (LESSOR)**

WHEREAS, the above parties entered into a Lease Agreement dated October 7, 2019 (the "Lease Agreement"); and

WHEREAS, the parties desire to execute this Addendum to ensure the Warren County Lessee's compliance with the Local Government Unit Debt Act.

NOW THEREFORE, intending to be legally bound, the parties hereto agree that, notwithstanding any term or condition of the Lease Agreement to the contrary, the following provisions shall govern and control:

1. The Lease term shall be for a period of 36 months and shall not exceed 36 months. During the 36-month Lease term, Lessor shall retain ownership of the equipment and shall be solely responsible, financially and otherwise, for maintaining the equipment in good and working condition, repairing the equipment and, if necessary, replacing the equipment. At the conclusion of the 36-month Lease term, the equipment shall become the sole and exclusive property of the Lessee, and Lessee shall then become solely responsible, financially and otherwise, for maintaining the equipment in good and working condition, repairing the equipment and, if necessary, replacing the equipment.
2. During the 36 month Lease term during which Lessor retains ownership of the equipment, Lessor shall indemnify Lessee against, and hold Lessee harmless for, any and all claims, actions, suits, proceedings, costs, expenses, damages and

liabilities, including reasonable attorney fees arising out of, connected with, or resulting from the equipment subject to this Lease, including, but not limited to the manufacture, selection, delivery, use, operation or return of the equipment. **

Does not pertain to any acts of God or malfunction of school district property, including but not limited to piping failures, well failures or pump failures.

At the conclusion of the 36 month Lease term, when Lessee acquires ownership of the equipment, Lessee shall indemnify Lessor against, and hold Lessor harmless for, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney fees arising out of, connected with, or resulting from the equipment subject to this Lease, including, but not limited to the manufacture, selection, delivery, use, operation or return of the equipment.

3. It is agreed and understood that Lessee is not pledging its full faith, credit and taxing power as security for payment.
4. If in a future year the Lessee's Board of School Directors does not appropriate sufficient funds to make the payments owed pursuant to the Lease Agreement, the Lease Agreement shall terminate and Lessee will not be obligated to make payments under the Lease Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Lessee shall deliver possession of the equipment to Lessor as the Lessor's sole and exclusive remedy.
5. The equipment that is being leased by the Lessor pursuant to the Lease Agreement has an anticipated and expected useful life that exceeds the 36-month Lease term.

In the event of any inconsistency or conflict between the terms of this Addendum and the terms of the Lease Agreement, the parties hereto agree that the terms of this Addendum shall govern and control.

The parties hereto, through their authorized agents, have entered into this Addendum the day and year first written above.

ATTEST:

WARREN COUNTY SCHOOL DISTRICT

Ruth Huck, Board Secretary

Donna Zariczny, Board President

KINZUA WATER TREATMENT


Signature of Authorized Agent

Printed Name of Authorized Agent

CULLIGAN WATER CONDITIONING



Signature of Authorized Agent



Printed Name of Authorized Agent