

WRT 2020-06

Resolution to Approve Lease

RESOLUTION OF THE TOWNSHIP BOARD OF WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA, AUTHORIZING LEASING CERTAIN PROPERTY TO CENTER GROVE COMMUNITY SCHOOL CORPORATION, JOHNSON COUNTY, INDIANA.

Whereas, the Township Board (the "WRT Board") of White River Township, Johnson County, Indiana, has been provided at this meeting a form of a lease attached hereto as Exhibit A (the "Lease"), which documents the use by the Center Grove Community School Corporation, Johnson County, Indiana, (the "School Corporation"), beginning on September 1, 2020, of a portion of the real property and building located at 2929 South Morgantown Road, Greenwood, Indiana, which is owned by WRT; and

Whereas, Indiana Code 36-1-11-8, as amended, permits the transfer of exchange of property among governmental entities upon terms and conditions agreed upon by the governmental entities by adoption of a substantially identical resolution by each governmental entity; and

Whereas, it is the WRT Board's understanding that the Board of School Trustees of the School Corporation (the "School Board") will consider approval of the Lease at its meeting to be held on July 23, 2020; and

Whereas, the WRT Board has reviewed the Lease and now desires to approve this Resolution which it understands is substantially identical to the resolution to be presented to the School Board for adoption on this matter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWNSHIP BOARD OF WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA, AS FOLLOWS:

Section 1. The lease is hereby approved.

Section 2. Each of the Township Trustee of WRT (the "Trustee") and the Chair of the WRT Board (the "Chair") is hereby authorized to execute the Lease as presented and with the appropriate date to be inserted on the first page. In addition, each of the Trustee and the Chair is hereby authorize~~d~~ to execute any and all documents and to take any and all actions which such person deems necessary or appropriate to complete the transaction contemplated by this Resolution; provided however, that any such document must be executed by both of the forgoing people and must be consistent with the terms and conditions set forth in the Lease. Any and all documents executed by the Trustee and the Chair in connection with the transactions contemplated by this Resolution and any and all actions taken by the Trustee and the Chair in connection with the transactions contemplated by this Resolution are hereby approved.

Section 3. The WRT Board hereby determines that this Resolution is substantially identical to the form of the resolution to be presented to the School Board for adoption on this matter July 23, 2020.

This Resolution is hereby APPROVED by the Township Board of White River Township, Johnson County, Indiana, this 21st day of July, 2020.

TOWNSHIP BOARD OF WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA

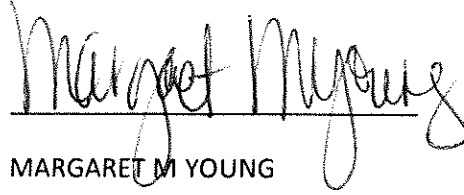
NAY

MARGARET M YOUNG

RICHARD HUBER

DAVID S POLLARD

AYE



MARGARET M YOUNG

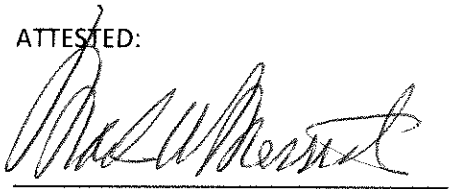


RICHARD HUBER



DAVID S POLLARD

ATTESTED:



MARK W MESSICK - TRUSTEE

LEASE AGREEMENT

This Lease Agreement, is made as of the ____ day of ____, 2020 (hereinafter referred to as this "Lease"), by and between the Center Grove Community School Corporation, Johnson County, Indiana (hereinafter referred to as "Lessee"), and White River Township, Johnson County, Indiana, (hereinafter referred to as "Lessor")(each of Lessee and Lessor, hereinafter referred to as a "Party" and, collectively, as the "Parties").

WITNESSETH:

For and in consideration of the obligations, rights, interests, covenants, conditions, agreements, and stipulations of the Parties hereinafter expressed, the Parties agree as follows:

- Premises.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the area identified in Exhibit "A" in a building known as the White River Township Trustee's Office and located at 2929 South Morgantown Road, Greenwood, IN 46143 (hereinafter referred to as the "Building"), and all of the real estate on which such portion of the Building is located (the Building and the real estate, hereinafter referred to as the "Property"), including all fixtures located therein, all of the common areas identified on Exhibit "A" attached hereto and all appurtenances thereto including all rights of ingress and egress which Lessee may reasonably require for its purposes (hereinafter referred to as the "Premises"). A depiction of the Premises, including the common areas, is attached hereto as Exhibit "A."
- Term.** The term of this Lease shall commence on September 1 2020 (hereinafter referred to as the "Effective Date"), and shall continue until terminated by either Party without cause with no less than ninety (90) days written notice, or by the non-defaulting Party as provided in Section 18 and Section 19 of this Lease .
- Premises Representations.** Lessor represents and warrants that as of the Effective Date: (a) the Premises shall be in good condition and repair; (b) that all electrical, plumbing, heating, ventilating/air conditioning, water heating and sprinkler systems (if any) and all fixtures, components and equipment in and serving the Premises shall be in good condition and in proper working order; and (c) that the Premises shall be in compliance with all applicable federal, state, and local safety, health, environmental, zoning and building laws, codes, ordinances, rules, regulations (the "applicable codes"). If the Premises are or are alleged to be in violation of applicable codes, it shall be Lessor's responsibility to bring the Premises into compliance. Lessee's obligation under this Lease shall not begin until the foregoing representations are true and accurate.
- Ingress and Egress.** Lessee shall have sufficient parking and loading areas and unobstructed ingress and egress between all of the entrances to the Premises and any public street or alley. Lessee shall be permitted to use fifteen (15) unassigned parking spaces in the surface parking lot located to the north of the Building.
- Use and Quiet Enjoyment.** Lessee shall use the Premises for all of the purposes related to or in connection with its use of the Premises for education purposes or in support of such

education purposes, including, but not limited to, activities related to the construction and/or renovation of any of the facilities operated by Lessee. If Lessee shall perform all of the covenants set forth in this Lease, Lessee shall have quiet enjoyment of the Premises and shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five/three hundred sixty-six (365/366), as applicable, days each year.

6. **Rent.** Lessee shall not pay any monetary rent for its occupancy and use of the Premises. However, Lessee shall pay rent to Lessor in the fulfillment of Lessee's payment of utility expenses under Section 7 of this Lease.

7. **Utility Expenses.** Provided Lessor provides Lessee a copy of the bills received by Lessor for the current month and the immediately preceding two months as the Utility Expenses (as hereinafter defined) with respect to the Property no later than the last day of each March, June, September and December, Lessee shall pay to Lessor no later than the last day of the month immediately after Lessor provides Lessee the bills for the Utility Expenses, thirty-three percent (33%) of the aggregate amount of such utility bills for such quarterly period. Such obligation of Lessee to pay such Utility Expenses shall commence on October 31, 2020. Notwithstanding anything in this Section 7 to the contrary, the Utility Expenses for the first payment by Lessee to be paid no later than October 31, 2020, shall be in an amount equal to thirty-three percent (33%) of the aggregate amount of such utility bills for September, 2020 provided Lessor provides Lessee a copy of such bills received by Lessor no later than the last day of September, 2020. In addition and notwithstanding anything in this Section 7 to the contrary, except as otherwise provided herein with respect to termination of this Lease in accordance with Section 18 or Section 19 of this Lease, the Utility Expenses to be paid as Lessee as the final payment by Lessee by no later than the last day of the applicable April, July, October or January immediately following the termination of this Lease, shall be in an amount equal to thirty-three percent (33%) of the aggregate amount of such utility bills for the quarterly period ending on applicable March, June, September or December, which immediately follows the termination of this Lease, and then prorated for the number of days of occupancy of the Premises by Lessee during such quarter, provided Lessor provides Lessee a copy of such bills received by Lessor no later than the last day of such applicable March, June, September or December. The term "Utility Expenses" shall mean and include all public utilities, and public charges such as ditch fees or drainage fees, but not including real estate property taxes. The term "Utility Expenses" shall not include costs incurred by Lessor with respect to any janitorial or custodial services, trash disposal, grounds maintenance services, including mowing, trimming, snow removal and salting of parking lots and sidewalks and routine or other maintenance, repairs or capital improvements to the Property, including, but not limited to, routine or other maintenance, repairs or capital improvements involving the foundation, walls, floors, ceilings, roofs, gutters, electrical, mechanical, plumbing and technology systems and equipment and lighting and plumbing fixtures and equipment. In addition and notwithstanding anything in this Section 4 to the contrary, if Lessee engages in any activity resulting in a public assessment or other real property tax on the Property as a result of Lessee's use, Lessee shall pay Lessor for any such public assessment or real property tax. Lessee shall be responsible for its own telecommunication (phone, internet, or the like).

8. **Security Deposit.** Lessee shall not pay a security deposit.

9. **Use of Premises.** Lessee shall use the Premises for education purposes or in support of such education purposes and in conformance with all federal, state and local laws and regulations.

10. **Repairs, Maintenance, and Changes by Lessee**

(a) Lessor is responsible for all necessary and routine maintenance and repairs as well as all structural or capital repairs to all of the Property and equipment related thereto, including, but not limited to the Premises, which maintenance and repairs shall be done in a workmanlike manner in order to maintain the Property in the same or substantially similar condition as of the Effective Date. Notwithstanding the foregoing, if Lessee damages or destroys any portion of the Premises, the Building, including the common areas, or the Property during Lessees' use and occupancy of the Premises, Lessee shall proceed with reasonable dispatch to repair such damaged or destroyed Premises, Building or Property, which repairs shall be done in a workmanlike manner in order to maintain the Property in good condition and repair. Lessee shall likewise be responsible for the regular, daily maintenance, cleaning and upkeep of the area within the Premises; provided, however, no such regular, daily maintenance shall including, but not limited to, grounds maintenance services, including mowing, trimming, snow removal and salting of parking lots and sidewalks and routine or other maintenance, repairs or capital improvements to the Property, including, but not limited to, routine or other maintenance, repairs or capital improvements involving the foundation, walls, floors, ceilings, roofs, gutters, electrical, mechanical, plumbing and technology systems and equipment and lighting and plumbing fixtures and equipment . Upon the expiration or termination of this Lease, Lessee shall remove all loose property and equipment of Lessee from the Premises and surrender the Premises to Lessor "broom clean" in good order and condition, ordinary wear and tear excepted. Any property left on the Premises after the expiration or other termination of this Lease may be disposed of by Lessor in any manner and without any liability to Lessee.

(b) Lessee may make any necessary changes, alteration, additions, or improvements to the Premises subject to the written approval of Lessor.

11. **Custodial and Grounds Maintenance Services.** Lessor shall provide janitorial and custodial services to all of the Property. Lessor shall provide all grounds maintenance services to all of the Property, including mowing, trimming, snow removal and salting of parking lots and sidewalks on a schedule substantially similar to the schedule used by Lessee for the area school buildings. No evening, weekend or holiday service shall be provided.

12. **Utilities.** Lessor shall furnish and pay for all utilities required by Lessee to conduct Lessee's normal business operations on the Premises.

13. **Fire Alarm/Fire Extinguisher Monitoring and Maintenance.** Lessor shall be

responsible for the monitoring and maintaining any and all fire alarm monitoring systems and fire extinguishers located on the Premises as required by state and local fire department laws, regulations and codes.

14. Damage to Lessee's Property or Premises.

- (a) The Lessor and its agents shall not be liable in damages, by abatement in payment of Utility Expenses by Lessee or otherwise, for any damage either to the person or the property of Lessee, or for the loss of or damage to any property of the Lessee by theft or from any other cause whatsoever, whether similar or dissimilar to the foregoing. Lessor and its agents shall not be liable for any injury or damage to persons or property, or loss or interruption to operations resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the building, or from the pipes, appliances, or plumbing works, or from the roof, street, or subsurface, or from any other place, or by dampness, or by any cause of whatsoever nature. None of the limitations of the liability of Lessor or its agents provided for in this subsection (a) shall apply if such loss, injury, or damages are caused by the negligence or willful misconduct of the Lessor, its agents, employees, or independent contractors.
- (b) The Lessee and its agents shall not be liable in damages for any damage either to the person or the property of Lessor, or for the loss of or damage to any property of the Lessor by theft or from any other cause whatsoever, whether similar or dissimilar to the foregoing. Lessee and its agents shall not be liable for any injury or damage to persons or property, or loss or interruption to operations resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the building, or from the pipes, appliances, or plumbing works, or from the roof, street, or subsurface, or from any other place, or by dampness, or by any cause of whatsoever nature. None of the limitations of the liability of Lessee or its agents provided for in this subsection (b) shall apply if such loss, injury, or damages are caused by the negligence or willful misconduct of the Lessee, its agents, employees, or independent contractors.

15. Indemnity, Liability Insurance, Building Insurance, Waiver of Subrogation

- (a) To the extent permitted by law, each of the Parties hereby indemnifies and agrees to hold the other Party harmless and free from damages sustained by person or property, and against all claims of third persons for damages arising out of the Lessee's use of the Premises or Lessor's operations on the Property, and for all damages and monies paid out by either in settlement of any claim or judgments, as well as for all expenses and attorneys' fees incurred in connection therewith. Each of the Parties shall obtain all necessary insurance to cover its own risks.
- (b) During the term of this Lease, Lessee shall obtain at its expense commercial

general liability insurance coverage to include the contractual liability assumed by Lessee under this Lease in an amount equal to the insurance amount it carries for all other similar facilities operated or owned by Lessee. Lessee shall insure its own property and contents kept on the Premises.

- (c) During the term of this Lease Lessor shall at its expense procure and maintain
 - (i) "all risk" property insurance covering the Property for the full replacement cost thereof including additions or improvements, and
 - (ii) commercial general liability insurance coverage to include the contractual liability assumed by Lessor under this Lease in an amount equal to the insurance coverage obtained by Lessee in accordance with subsection 15(b) of this Lease.

16. **Destruction or Condemnation.** In the event of any damage or destruction of the Premises by casualty (the "Event"), which may be repaired within thirty (30) days from the Event, as determined by a registered and licensed architect or engineer satisfactory to Lessor and Lessee, then this Lease shall not be terminated. Lessor, at its cost and expense, shall repair and restore the Premises to substantially the same condition existing immediately preceding the Event. If the Premises are not in a tenable condition or if Lessee shall be deprived of the use or occupancy of all or any part of the Premises during the period of repair, a proportionate abatement of Utility Expenses shall be allowed Lessee. If such damage or destruction cannot be repaired within ninety (90) days of the Event, as determined by such architect or engineer, then this Lease may be terminated by either Party by written notice within 30 days of the Event, and both Parties shall be discharged of their obligations under this Lease with the Utility Expenses adjusted to the date of such Event.

If the Premises, or any portion thereof, are condemned by any legally constituted authority, or if a conveyance or other acquisition in lieu of such condemnation is made (all of which are referred to herein as "condemnation"), then this Lease shall terminate as to the part condemned as of the date the condemning authority takes title or possession, whichever first occurs. If the condemnation materially impacts the operations of Lessee, Lessee may terminate this Lease as of the date the condemning authority takes possession by written notice within thirty (30) days after Lessor gives Lessee written notice of such taking. If Lessee does not terminate this Lease it shall remain in full force and effect as to the portion of the Premises remaining with the Utility Expenses reduced in the proportion that the floor area taken bears to the total floor area of the Premises. Any award or payment for the condemnation of the Premises shall be the property of Lessor, but Lessee shall be entitled to any award for moving expenses or loss of, or damage to, Lessee's property, however, Lessor shall be under no obligation to pursue any loss, expense or damage on Lessee's behalf. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall, to the extent of the award, repair any damage to the Premises caused by such condemnation to the extent practicable.

17. **Default.** The following events will be an event of default under this Lease:

- (a) Lessee's failure to pay Lessor any sum due under this Lease which is not contested by Lessee and is not cured within thirty (30) days after receipt of written notice of default.

- (b) Either party's material failure to perform or observe any covenant or condition of this Lease which is not cured within thirty (30) days after breaching party's receipt of written notice of default, but if the failure cannot be cured within thirty (30) days, the breaching Party shall not be in default if it commences cure within thirty (30) days, and thereafter diligently pursues curing.
- (c) Either party files a petition with respect to its own financial condition in bankruptcy or is adjudicated bankrupt or insolvent or in need of any relief provided by debtors and such action is not dismissed within sixty (60) days after the filing thereof.

18. **Remedies of Lessor.** Upon the occurrence of any event of default by Lessee, Lessor shall terminate this Lease at any time upon the date specified in a notice to Lessee and resume possession by an action in law. Lessee's liability for damages shall survive such termination. Upon termination such damages recoverable by Lessor from Lessee shall be an amount equal to Liquidated Damages. The term "Liquidated Damages" means an amount equal to the Utility Expenses charged to Lessee by Lessor for the month immediately prior to the occurrence of the event of default multiplied by six (6). However, if in the event Lessee causes physical damages or destruction within the Premises, Building or Property, beyond normal wear and tear, as provided in Section 10 (a) of this Lease, Lessee shall be responsible for any such damages in addition to the Liquidated Damages.

19. **Remedies of Lessee.** Upon the occurrence of any event of default by Lessor, Lessor may elect to exercise any one or more of the following remedies: (a) terminate this Lease and collect any and all damages and expenses incurred resulting from Lessor's breach; (b) cure Lessor's default and offset Lessee's cost in effecting such cure against future Utility Expenses; (c) continue this Lease and collect any and all damages and expenses incurred resulting from Lessor's breach; or (d) pursue an action for specific performance of Lessor's obligations under this Lease.

20. **Subletting and Assigning. Subletting and Assigning.** Lessee shall not sublet any portion of the Premises nor assign this Lease in whole or in part without the written consent of Lessor as to both the terms of such assignment or sublease and the identity of such assignee or sublessee, which consent shall not unreasonably be withheld, and in the event of a subletting so approved by Lessor, Lessee shall nevertheless remain obligated to Lessor under the terms of this Lease.

21. **Inspection.** Lessee will permit Lessor, its agents, employees, and contractors to enter all parts of the Premises to inspect the same and to enforce or carry out any provisions of this Lease.

22. **Non-Waiver.** Lessor's or Lessee's failure to insist upon strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be a waiver or relinquishment for the future of such covenant, right, or option, but the same shall remain in full force and effect.

23. **Entire Agreement and Amendments.** This Lease contains the entire agreement of the Parties and all prior agreements, understandings or commitments are superseded by this Lease. Any amendments to this Lease shall be in writing signed by both Parties.

24. **Captions.** The captions and headings herein are for convenience and reference only and should not be used in interpreting any provision of this Lease.

25. **Applicable Law.** This Lease shall be governed by and construed under the laws of the State of Indiana. If any provision of this Lease, or portion thereof, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. The preferred venue for enforcement or interpretation of this Lease shall be the Superior Courts of Johnson County, Indiana.

26. **Successors.** This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Lessor, its successors, and assigns; and shall inure to the benefit of and be binding upon Lessee, its heirs, executors, administrators, successors, and assigns.

27. **Counterparts.** This document may be executed with more than one signature page that as a whole will be considered a complete agreement. The Parties agree that photocopied or other electronic duplication of a signature counterpart may constitute a Party's acceptance of this Agreement.

28. **Special Provision.** Each of the Parties agrees that none of the language, terms, conditions, obligations or rights set forth in this Lease modifies any of the (a) rights, obligations or intent of either Party as they pertain to the Special Warranty Deed recorded in the Office of the Recorder of Johnson County, Indiana on January 2, 2008, as Instrument Number 2008-000009 (the "Deed") or (b) language, including, but not limited to, the reversion, contained in the Deed. Furthermore, each Party agrees that it will not use this Lease or any of the language, terms, conditions, obligations or rights set forth in this Lease as evidence to support its interpretation of any language in the Deed or any of the rights, obligations or intent of either Party as they pertain to the Deed. Furthermore, the Parties agree that the lawsuit pending in the Johnson Superior Court 1, Johnson County, Indiana styled as White River Township, Johnson County, Indiana v. Center Grove Community School Corporation, Johnson County, Indiana, Cause No. 41D01-1912-PL-000185 (the "Lawsuit") shall be dismissed in its entirety, without prejudice. Each Party is responsible for its own attorney's fees and costs incurred in connection with the Lawsuit and in connection with the preparation of this Lease.

29. **Community Room.** Access to the Community Room within the Building is not included as part of the common areas of the Building, and access to such Community Room by Lessee is subject to Lessor's scheduling and discretion.

30. **Notice.** Any and all notices required or provided for under this Lease shall be sent in writing, and all such notices and payments required under this Lease shall either be served

personally, sent by certified United States mail, return receipt requested or by overnight mail courier to the following addresses or such other address as hereinafter provided in writing to the other Party:

If to White River Township:

2929 South Morgantown Road
Greenwood, IN 46143
Attn: Trustee

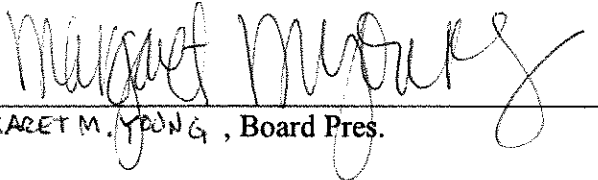
If to Center Grove Community School Corporation

4800 West Stones Crossing Road
Greenwood, IN 46143
Attn: Superintendent

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first written above.

WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA

Dated: 7/21/2020

By: 
MARGARET M. YOUNG, Board Pres.

CENTER GROVE COMMUNITY SCHOOL CORPORATION, JOHNSON COUNTY, INDIANA

Dated: _____

By: _____

EXHIBIT A

Floor Plan of Building

