

GROUND LEASE

THIS GROUND LEASE (the “Lease”) is made and entered into this ____ day of _____, 2017 (the “Effective Date”), by and between **Central Cass Public School District No. 17**, Cass County, North Dakota (the “School District”) and **Casselton Park District**, a park district under Chapter 40-49 of the North Dakota Century Code (the “Park District”).

RECITALS

WHEREAS, the Park District desires to construct a wellness center (the “Wellness Center”) in the City of Casselton (the “City”) to improve the health, welfare, and access to recreational activities of the citizens of the City; and

WHEREAS, the Park District desires to construct and operate the Wellness Center on property identified as parcel number 1 on the attached **Exhibit A** (the “Property”); and

WHEREAS, the Property is owned by the School District, and to facilitate the construction and operation of the Wellness Center, the School District desires to grant this Lease to the Park District.

FOR VALUABLE CONSIDERATION, the School District and the Park District (collectively, the “Parties”) agree as follows:

1. **Purpose.** The purpose of this Lease is to provide a ground lease to the Park District for the purposes of constructing, operating, and managing the Wellness Center for the benefit of the Park District, the School District, and the community of Casselton.

2. **Grant of Lease.** During the Term of this Lease, the School District hereby demises, rents, leases, and lets to the Park District, and the Park District hereby rents, leases, and hires from the School District, the Property, together with any and all easements, air rights, and other rights and appurtenances thereunto belonging or appertaining and any improvements thereon or to be made, in each case upon the terms, covenants, and conditions of this Lease, provided such easements, air rights, and other rights and appurtenances are for the sole purpose of providing the Park District with access necessary to design, construct, finance, operate, and maintain the Wellness Center pursuant to this Lease.

3. **General Use.** The Wellness Center shall be operated as a public facility and shall be made available to the public on terms as determined by the Park District.

4. **Access and Parking Easements.** During the Term, the School District grants a non-exclusive access easement to the Park District in, over, and across other property owned by the School District for ingress and egress for any purpose relating to the use or operation of the Wellness Center. The School District additionally grants a non-exclusive easement to the Park District to utilize parking lots located on other property owned by the School District for any purpose relating to the use or operation of the Wellness Center.

5. **Term of Lease and Renewal.** The term of this Lease (the “Term”) will commence on the Effective Date and will terminate exactly ninety-nine (99) years after the Effective Date. Prior to the expiration of the Term, however, the School District and the Park District will, in good faith, negotiate a renewal of this Lease.

6. **Ownership.** During the Term of this Lease and all renewals thereto, title to the Wellness Center and all other improvements and fixtures located therein, shall be held by the Park District. The Wellness Center shall be considered severed from the real estate and shall not be deemed to be part of the Property. Upon termination of this Lease in accordance with Section 18 and payment by the School District if applicable, and absent agreement of the Parties to some other arrangement, title to the Wellness Center and all other improvements and fixtures therein shall be transferred to the School District. Temporary structures and removable furnishings and equipment of the Park District shall be removed by the Park District.

7. **Taxes and Other Governmental Charges.** The School District shall pay all property taxes, installments of special assessments, and other governmental charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Property or the Wellness Center. With respect to the installments of special assessments and other governmental charges, the School District shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

8. **Financing.** The overall estimated cost for design, construction, furnishing, and fit up of the Wellness Center is approximately \$4 Million. Of this amount, the Park District shall be responsible for providing funding in an amount not to exceed \$2.5 Million. The Park District and the School District will, in good faith, investigate and pursue opportunities for grants and other funding to meet the difference between the estimated cost of the Wellness Center and the \$2.5 Million. Financing to design, construct, furnish, and fit up the Wellness Center must be secured prior to the commencement of construction of the Wellness Center.

9. **Preliminary Activities, Design, and Construction.** The allocation of responsibility between the School District and the Park District for preliminary activities, including securing any necessary permits or approvals, environmental testing, and utility relocation, for the design, and for the construction of the Wellness Center are outlined in the Design and Construction Agreement entered by and between the School District and the Park District on _____.

10. **Furnishing and Fit Up.** The Park District and the School District will jointly agree on the furnishings for the Wellness Center, including but not limited to equipment and furniture, and the fit up for the Wellness Center. These expenses will be paid from the overall financing secured for the Wellness Center in Section 8.

11. **Operations, Management, and Maintenance.** The Park District shall have authority over the operations, management, and maintenance of the Wellness Center and be responsible for the costs and expenses associated with such, while taking into consideration the recommendations of the Community Advisory Committee established pursuant to the Joint Powers Agreement by and between the City and the Park District dated _____. The Park District shall operate, manage, and maintain the Wellness Center in accordance with industry practices and

standards that would be exercised by a prudent and experienced operator, manager, or maintenance provider in the same kind of undertakings and under similar circumstances as those applying to the Wellness Center. In its operation and management of the Wellness Center, the Park District may require users of the Wellness Center to procure and show evidence of liability insurance. The School District and the Park District will enter into a separate Use Agreement outlining the School District's use and maintenance of the Wellness Center.

12. **Future Renovations and Improvements.** After service commencement of the Wellness Center, any additions or modifications to the Wellness Center building may only be done with the consent of both the Park District and the School District and must be done pursuant to a written agreement. Neither the Park District nor School District shall be held responsible for the cost of any future renovations or improvements without its prior written consent. Additions or modifications to the Wellness Center building shall not in any way damage the Wellness Center or the Property nor cause it to be used for purposes other than those authorized under the provisions of municipal, state, and federal law.

13. **Liability and Insurance.** Each Party is responsible for its own acts and agrees to assume its own liability for those acts and consequences. The liability of the School District and the Park District are governed by North Dakota Century Code chapter 32-12.1. The Park District shall procure and maintain sufficient liability insurance covering the Wellness Center and the Park District's management and operation of the Wellness Center. The Park District is also responsible for procuring property insurance for the contents of the Wellness Center.

The School District shall insure the Wellness Center, both during construction and afterward, against any loss by fire and other perils covered under the usual "special form" extended coverage endorsement and such other hazards, casualties, and contingencies. Any such insurance may be subject to reasonable deductibles and shall name the Park District as the loss payee. The net proceeds of any insurance shall be applied as provided in Section 15 hereof. The School District shall provide the Park District with proof of insurance on an annual basis.

14. **Liens.** The Park District shall not, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Wellness Center or the Property without the prior written consent of the School District. The School District shall not, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Wellness Center or the Property without the prior written consent of the Park District.

15. **Damage, Destruction, and Condemnation.** In case of damage, destruction, or condemnation of the Wellness Center or the Property or any part thereof, the net proceeds of the insurance or condemnation awards shall be used and applied as promptly as possible to repair, restore, rebuild, or replace the Wellness Center as nearly as practicable to the condition existing prior to such damage, destruction, or condemnation. The Park District or the School District may invest, at its discretion, additional funds to repair, restore, rebuild, or replace the Wellness Center beyond any insurance or condemnation award. In the event the Property or any part thereof is condemned, the Park District and the School District will mutually determine, in good faith,

whether continuation of this Lease, or amendment thereof, is reasonable based upon the extent to which the Property is taken and how the condemnation award should be used and applied.

16. **Inspection and Access.** The Parties agree that either Party, or its duly authorized agents, shall have the right at all reasonable times and upon reasonable notice to examine and inspect the Wellness Center and shall have such rights of access thereto as may reasonably be necessary in confirming the obligations of this Lease are being met.

17. **Events of Default and Remedies.**

a. The occurrence of any one or more of the following events during the Term will constitute a default by the Park District pursuant to this Lease:

A. Failure by the Park District to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Lease for a period of ninety (90) calendar days after notice of such failure requesting such failure to be remedied, given to the Park District by the School District, unless the School District shall agree in writing to an extension of such time prior to its expiration; provided, however, that if and so long as the Park District is proceeding with due diligence to cure the default, such 90-day period shall be extended to such period as is required to permit the Park District proceeding with due diligence to cure such default; and

B. Termination of the Design and Construction Agreement entered by and between the School District and the Park District on _____ due to a breach of the Design and Construction Agreement by the Park District.

b. The occurrence of any one or more of the following events during the Term will constitute a default by the School District pursuant to this Lease:

A. Failure by the School District to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Lease for a period of ninety (90) calendar days after notice of such failure requesting such failure to be remedied, given to the School District by the Park District, unless the Park District shall agree in writing to an extension of such time prior to its expiration; provided, however, that if and so long as the School District is proceeding with due diligence to cure the default, such 90-day period shall be extended to such period as is required to permit the School District proceeding with due diligence to cure such default; and

B. Termination of the Design and Construction Agreement entered by and between the School District and the Park District on _____ due to a breach of the Design and Construction Agreement by the School District.

c. Whenever any event of default shall have happened and be subsisting, the non-defaulting Party may take at its discretion any one or more of the following remedial steps:

A. Terminate this Lease; or

B. Take such action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of this Lease.

d. No remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy or remedies, but rather, each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power shall be exercised from time to time and as often as may be deemed expedient.

18. **Termination.** The Lease will terminate upon expiration of the Term or any renewal thereof, as applicable, or may be terminated by the non-defaulting Party pursuant to Section 17 hereof. In the event the non-defaulting Party is the School District and the School District desires to terminate this Lease prior to the expiration of the Term or of any renewal thereof, the School District must remit to the Park District, who in turn will remit to the City, the amount of sales tax bond proceeds that have been expended by the Park District for the construction of the Wellness Center.

19. **Notice.** Any notice or election required or permitted to be given or served by any Party to this Lease upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to School District: Central Cass Public School
802 5th Street North
Casselton, ND 58012

If to Park District: Attn: Director
Casselton Park District
P.O. Box 97
Casselton, ND 58012

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any Party may change its address for service of notice in the manner specified in this Lease.

20. **Entire Agreement.** This Lease constitutes the entire and complete agreement between the Parties and supersedes any prior oral or written agreements between the Parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein.

21. **Amendments.** No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the Party or Parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

22. **Binding Effect.** All covenants, agreements, warranties and provisions of this Lease will be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. When used herein, the singular will include the plural, the plural will include the singular, and the use of one gender will include all other genders, as and when the context so requires.

23. **Governing Law.** This Lease has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation.

24. **Rules of Construction.** The Parties acknowledge that they have had the opportunity to review this Lease, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any Party to this Lease.

25. **Dispute Resolution.** In the event there is a dispute that cannot be resolved informally, the Parties shall select a mediator to mediate the dispute, all Parties equally sharing the cost. If the dispute is not resolved by mediation, the Parties may pursue any legal remedy.

26. **Assignment.** Neither the School District nor the Park District may assign this Lease to any other person unless written consent is obtained from the other Party to this Lease.

27. **Severability.** If a court of competent jurisdiction finds any portion of this Lease to be contrary to law, invalid, or unenforceable, the remainder of this Lease will remain in full force and effect.

28. **Headings.** Headings in this Lease are for convenience only and will not be used to interpret or construe its provisions.

29. **Execution in Counterparts.** This Lease may be executed in counterparts with all Parties to this Lease having a fully-executed counterpart.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the School District has caused this Lease to be executed in its name by its duly authorized officers and the Park District has caused this Lease to be executed in its name by its duly authorized officers as of the date first above written.

CENTRAL CASS PUBLIC SCHOOL
DISTRICT NO. 17

President of the School Board

ATTEST:

Business Manager

STATE OF NORTH DAKOTA

COUNTY OF CASS

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Jack Haines, the President, and by Pamela Utt, the Business Manager, of the Central Cass Public School District No. 17, on its behalf.

Notary Public

CASSELTON PARK DISTRICT

President of the Park Board of
Commissioners

ATTEST:

Clerk

STATE OF NORTH DAKOTA

COUNTY OF CASS

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by Jonathan Warrey, President of the Board of Park Commissioners and by _____ -
_____, Clerk.

Notary Public

**EXHIBIT A –
THE PROPERTY**

[See the following pages.]

DRAFT