

USE AGREEMENT

This Use Agreement (“Agreement”) is made and executed as of the ___ day of _____, 2017, by and between the **Casselton Park District** (the “Park District”), and the **Central Cass Public School District No. 17**, North Dakota (the “School District”).

RECITALS

A. The School District is the owner of certain real estate, more particularly described on **Exhibit A** (the “Property”), located in Casselton, North Dakota. The School District has agreed to lease the Property to the Park District to allow the Park District to erect a wellness center on the Property (the “Wellness Center”), with the Park District owning the Wellness Center, under a separate ground lease entered by and between the School District and the Park District (the “Ground Lease”).

B. Although the Wellness Center will be open for general public use, the Park District has agreed to allow the School District exclusive use of the Wellness Center during specific designated times as provided in this Agreement in exchange for services and expenses that will be covered by the School District.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the Parties agree as follows:

ARTICLE I

AGREEMENT FOR USE OF THE WELLNESS CENTER

Section 1.01. Exclusive Use. The Park District hereby grants to the School District exclusive use of the Wellness Center, and the School District hereby rents and hires the Wellness Center from the Park District, upon the terms and conditions set forth in this Agreement. This Agreement will extend to any and all modifications to and improvements of the Wellness Center throughout the term of this Agreement.

Section 1.02. Permitted Use. During the School District’s exclusive use period, the School District will use the Wellness Center solely for School District programming. The School District will be solely responsible for providing adequate supervision of the activities conducted at the Wellness Center during this time period.

Section 1.03. Terms of Agreement. The initial term of this Agreement will commence on _____, and shall terminate on December 31, 2020. The School District shall have the option to renew the Agreement for twenty (20) successive years, and if thereby fully extended, this Agreement shall terminate on December 31, 2040. The option to extend shall be

automatically renewed unless notice is given by the School District more than thirty (30) calendar days prior to the termination date of the School District's desire not to renew. After expiration of the Agreement on December 31, 2040, the Park District shall offer terms to the School District for renewal of the Agreement.

Section 1.04. Payment of Rentals. In lieu of a monetary rental payment, the School District shall provide services to the Park District, as provided for in this Agreement, including upkeep and maintenance and janitorial services for the Wellness Center.

Section 1.05. Specified Hours. The School District shall have exclusive use of the Wellness Center as provided as shown in **Exhibit B**. The exclusive hours to be used by the School District during the school year and the summer shall be amended on an annual basis by Agreement between the Park District and School District; however, in no instance shall the exclusive hours provided to the School District exceed the number of hours the Wellness Center will be available to the membership public on an annual basis. The hours agreed upon by the Park District and the School District then in effect shall remain in effect until the Parties are able to agree upon new hours for the upcoming year. If the Parties cannot agree upon the hours of exclusive use by the School District, then the School District shall be able to designate twenty (20) hours of exclusive time to use the Wellness Center per week during the school year and ten (10) hours of exclusive time to use the Wellness Center per week during the summer.

Section 1.06. Possession and Enjoyment. During the term of this Agreement at the hours specified in Exhibit B, and as annually agreed upon by the School District and Park District thereafter, the Park District shall provide the School District with quiet use and enjoyment of the Wellness Center.

Section 1.07. Title to Property and Wellness Center. Title to the Property shall remain in the School District, with title to the Wellness Center remaining in the Park District.

ARTICLE II

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 2.01. Maintenance of the Wellness Center by the School District. The School District shall, at its own expense, maintain, preserve and keep the Wellness Center in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Wellness Center in such condition. The School District shall be responsible, at its own expense for all cleaning and janitorial services. The School District shall additionally provide, at its own expense, all necessary toiletry items for the bathrooms and locker rooms.

Section 2.02. Equipment Repair and Replacement. The purchase of additional exercise related equipment for the Wellness Center shall be done by written agreement between the Park District and the School District

Section 2.03. Utility Charges. The School District shall pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Wellness Center.

Section 2.04. Liability Insurance; Indemnification. The Park District shall take such measures as may be necessary to insure against any liability for injuries to or disability or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Wellness Center, or any part thereof, during the Agreement term and any renewals thereof. The School District shall insure against any liability for injuries to or disability or death of any person or damage to or loss of property arising out of or in any way relating to the School District's use of the Wellness Center during designated times. With respect to activities which take place on the Wellness Center that are clearly sponsored by one of the Parties, then with respect to those activities, the Party agrees to indemnify and hold the other harmless, from any and all claims, damages, costs or expenses, including attorney's fees, arising out of such activities, to the extent allowed by North Dakota law. To the extent permitted by applicable insurance, each Party waives any right of subrogation against the other with respect to any bodily injury or property damage occurring on or arising out of the use of the Wellness Center.

ARTICLE III

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. Any one or more of the following events shall constitute an event of default under this Agreement:

(1) Failure by the School District to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of ninety (90) 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

(2) Failure by the Park District to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of ninety (90) 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

Section 5.02. Park District Remedies. Whenever any event of default by the School District shall have happened and be subsisting, the Park District may take at its option any one or more of the following remedial steps:

- (1) Take possession of the Wellness Center without termination of this Agreement and exclude the School District from the Wellness Center;
- (2) Terminate this Agreement and exclude the School District from possession of the Wellness Center, or
- (3) 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 the School District under this Agreement.

Section 5.03. School District Remedies. Whenever any event of default by the Park District shall have happened and be subsisting, the School District may take at its option any one or more of the following remedial steps:

- (1) Terminate this Agreement, or
- (2) 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 the Park District under this Agreement.

Section 5.03. Manner of Exercise. No remedy herein conferred upon or reserved to the Park District is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement 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.

Section 5.04. Attorney's Fees and Expenses. In the event the School District should default under any of the provisions of this Agreement and the Park District should employ attorneys or incur other expenses for the enforcement of performance of any obligation or agreement on the part of the School District, the School District will on demand pay to the Park District the reasonable fee of such attorneys and such other expenses so incurred to the extent then permitted by North Dakota law.

Section 5.05. Effect of Waiver. In the event any term or condition contained in this Agreement should be breached by either Party and the breach is thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

understandings or agreements which in any way change the terms, covenants, and conditions set forth herein.

Section 7.06. Binding Effect. All covenants, agreements, warranties, and provisions of this Agreement will be binding upon and insure 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.

Section 7.07. Governing Law. This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation.

Section 7.08. Rules of Construction. The Parties acknowledge that they have had the opportunity to review this Agreement, 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 Agreement.

Section 7.09. 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.

Section 7.10. Headings. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the Park District has caused this Agreement to be executed in its name by its duly authorized officers and the School District has caused this Agreement 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

EXHIBIT B –

EXCLUSIVE USE HOURS

The School District shall have exclusive use of the Wellness Center for the 2018-2019 school year during the following hours on Monday through Friday of each week.

7:30 a.m. – 9:30 a.m.

3:30 p.m. – 5:00 p.m.

During the summer of 2019, the School District shall have exclusive use of the Wellness Center for the following hours on Monday through Friday of each week:

6:30 a.m. – 8:00 a.m.

In addition to the above hours, the School District shall have exclusive use of certain portions of the non-fitness lab/weight room portion of the Wellness Center during games, tournaments, and events held at the School District.

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