

LEASE  
between  
NORTHWOOD CHILDREN'S SERVICES  
DULUTH, MINNESOTA  
and  
INDEPENDENT SCHOOL DISTRICT NO. 709

THIS INDENTURE OF LEASE, effective the 1<sup>st</sup> day of July, 2019 by and between Northwood Children's Services, a Minnesota Corporation, party of the First Part, hereinafter called Lessor, and Independent School District #709, a public corporation, party of the Second Part, hereinafter called the Lessee.

WITNESSETH:

In consideration of the covenants, conditions and promises hereby mutually undertaken to be kept and performed by the parties, Lessor hereby demises and leases, and Lessee hereby hires and takes the following described premises situated in the City of Duluth, County of St. Louis and State of Minnesota, to wit:

A school building located at 4000 West 9<sup>th</sup> Street, designated as Merritt Creek Academy having a floor space of 24,995 square feet on approximately 60 acres of land, together with the free and unmolested right to sidewalks, driveways, playgrounds, and parking lots also part of the Merritt Creek Academy of Northwood Children's Services or belonging thereto, all being collectively referred to as the demised premises.

TO HAVE AND TO HOLD THE SAME, unto the said Lessee, for a period of three (3) years from the 1<sup>st</sup> day of July, 2019, until the 1<sup>st</sup> day of July, 2022, with the following terms and conditions and covenants, to-wit:

1. Rent. The Lessee agrees to pay to the Lessor in lawful money of the United States, during the lease term and extensions thereof, a net annual rent (hereinafter called net rent) as follows:

For the years of the lease, commencing July 1, 2019, and ending June 30, 2020, the sum of One hundred three thousand, eight hundred five and 00/100ths Dollars (\$103,805) per twelve (12) month period. Rent shall be payable in equal monthly installments on the first day of each month in advance.

2. Use of Premises. The Lessee will use and occupy said premises for the purposes of Special Education and Regular Education School Programs for students receiving services through Northwood Children's Services and other services and programs incidental thereto, and for no other use or purpose without the written consent of Lessor, and Lessee shall not use the premises for any purpose in violation of any federal, state, or municipal statute or ordinance, or of any regulation, order, or directive of a governmental agency, as such statutes, ordinances,

Section 2. Use of Premises - continued.

regulations, orders, or directives now exist or may hereafter provide, concerning the use and safety of the demised premises.

3. Assignments and Subletting. Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof. Use of the premises by ISD 709 in accordance with the terms of its charter from Northwood Children's Services shall not be a violation of this clause. A consent by Lessor to one assignment, subletting, concession, or license shall not be deemed a consent to any subsequent assignment, subletting, concession, or license. An assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease.

4. Improvements. It is hereby agreed that the Lessee may install computers and telephonic, and other equipment related cabling in the demised premises, and may make other alterations to the premises, provided Lessee provides Lessor with a written description and or design of such installation, which must be approved in writing by Lessor, which approval will not be unreasonably withheld. No other alteration, addition, or improvement to the leased property shall be made by the Lessee without the written consent of the Lessor. Any alteration, addition, or improvement made by the Lessee after such consent shall have been given, shall be made at the sole expense of the Lessee, and the Lessee shall and will in each instance save said Lessor and said premises forever harmless and free from all costs, damages, loss and liability of every kind and character which may be claimed, asserted or charged, including liability to adjacent owners based upon the acts of negligence of said Lessee or its agents, contractors or employees, or upon the negligence of any other person or persons in or about said premises or upon the failure of any or either of them to observe and comply with the requirement of the law or with the regulations of the authorities in the said City of Duluth and will preserve and hold the Lessor and said premises forever free and clear from liens for labor and material furnished.

All such alterations, additions and improvements made by the Lessee and any fixtures installed as part thereof, (except as otherwise provided) shall at the Lessor's option become the property of the Lessor upon the expiration or other sooner termination of this lease; provided, however, that the Lessor shall have the right to require the Lessee to remove such fixtures at the Lessee's cost upon such termination of this lease. The Lessee may remove all furniture and other school office and/or communication and data processing equipment and apparatus (owned by the Lessee) whether attached or not, but after removal of same agrees to repair all damage caused by such removal and to deliver said demised premises to the Lessor in as good order and condition as the same were in on the date the lease term commenced or were thereafter put in by the Lessor, reasonable wear and tear excepted provided, however, Lessee may not remove the electrical, voice, and data cabling that services such equipment.

5. Right to Enter. The Lessor shall have reasonable right to entry to demised premises at any time for the purposes of examining or exhibiting the same or to make any needful repairs or alterations, but the making of any repairs, or exhibiting of the premises shall not unnecessarily interfere with the Lessee's use of the premises nor the conducting of the Lessee's business therein. The Lessor shall make repairs as provided herein on the same timetable and basis consistent with repairs it makes in other Northwood school facilities, and the Lessor shall not be liable to the Lessee, or any other person or persons, if said repairs are completed on this basis.

6. Liability of Lessor and Lessee. The Lessee shall defend and indemnify Lessor and save, protect and hold Lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorneys fees), cause of action, suits, claims or judgments arising from injury to persons or property, resulting from or based upon Lessee's use of the demised premises and/or the acts of its employees or others under its supervision. Lessor shall defend and indemnify Lessee and save, protect and hold Lessee harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorneys fees), cause of action, suits, claims or judgments arising from injury to persons or property, resulting from or based upon Lessor's maintenance or use of the demised premises and/or the acts of its employees or others under its supervision.

7. Condition of Premises. Responsibility to keep the demised premises in good repair and in good sanitary conditions during said term shall be apportioned as set forth in the attached schedule. Neither party will in any manner deface or injure said demised premises, or any part thereof, or do or permit anything to be done upon said premises or in the passageways, areas, sidewalks or streets adjacent thereto, that will amount to or create a nuisance. Lessee will not use said premises or permit the same or any part thereof to be used for any purpose contrary to the laws, ordinances or regulations of the United States of America or the State of Minnesota, or the City of Duluth or County of St. Louis, or of any rules or regulations of any boards or offices of said city or county. Lessee further agrees to return said premises peaceably and promptly to the Lessor at the end of the term of this lease, or at any previous termination thereof, in as good condition as the same are now in or may hereafter be put in, when not due to failure, on part of the Lessor, to perform maintenance and operations as required by other sections of this lease, and ordinary wear excepted.

8. Utilities. All utilities shall be paid as noted on the attached Schedule.

9. Unsafe Conditions, Condemnations and Eminent Domain. The Lessor hereby agrees that if any governmental authority has condemned or does condemn the demised premises or any part thereof as being unsafe or as not in conformity with any applicable law or regulation, and such a condition is the responsibility of Lessor and not caused by Lessee, the Lessor, at its own cost and expense, will immediately make such changes, alterations or repairs as may be necessary to comply with such law or regulation and if, during the course of such changes, alterations or repairs, Lessee is deprived of the use of any or all of said premises, the rent shall be abated during the period of deprivation in proportion to the part of the premises made untenable. The Lessee further agrees that if the demised premises, or any part thereof, or any part of the improvements of which they form a part, shall be taken for any street or other public

Section 9. Unsafe Conditions, Condemnations and Eminent Domain – continued.

use, or shall during the continuance of this lease be destroyed by the action of the public authorities, then this lease and the term demised shall thereupon terminate.

10. Fire and Casualty. It is agreed between the Lessor and the Lessee that if during the term of this lease the demised premises or the improvements thereon shall be injured or destroyed by fire or the elements, or through any other cause, so as to render the demised premises unfit for occupancy, or make it impossible to conduct the business of the Lessee thereon, or to such an extent that they cannot be repaired with reasonable diligence within thirty (30) days from the happening of such injury, then the Lessor or the Lessee may terminate this lease and the term herein demised from the date of such damage or destruction, and the Lessee shall immediately surrender the demised premises and all interest therein to the Lessor, and the Lessee shall pay rent only to the time of such surrender; and in case of any such destruction or injury the Lessor may re-enter and repossess the demised premises discharged of this lease, and may dispossess all parties then in possession thereof. But if the demised premises can be restored within sixty (60) days from the happening of the injury thereto, and the Lessor within fifteen (15) days from the occurrence of such injury elects in writing to so repair or restore said premises within sixty (60) days from the happenings of the injury thereto, then this lease shall not end or terminate on account of such injury by fire or otherwise, but the rent shall not run or accrue after the injury and during the process of repairs, and up to the time when the repairs shall be completed, except only that the Lessee shall during such time pay a pro rata portion of such rent apportioned to the portion of the demised premises which are in condition for occupancy or which may be actually occupied during such repairing period. In any event, the Lessee may, in the alternative, require that the Lessor, during the period of said repairs, provided other facilities which the Lessor owns and which are reasonably available or extend the period of the lease to complete the school year to enable the Lessee to conduct its school program. If, however, the demised premises shall be so slightly injured by any cause aforesaid, as not to be rendered unfit for occupancy, then the Lessor shall repair the same with reasonable promptness, and in that case the rent shall not cease or be abated during such repairing period. All improvements or betterment's placed by the Lessee on the demised premises shall, however, in any event, be repaired and replaced by the Lessee at his own expense and not at the expense of the Lessor.

11. Cancellation. This lease may be canceled and terminated as follow:

- a. Upon 60 days written notice by Lessee to Lessor and subsequent payment by Lessee to the Lessor of any amounts owed up to the effective date of the cancellation.
- b. In accordance with other provisions herein.

12. Insurance. Lessor agrees to provide and secure at Lessor's expense such insurance as in the Lessor's judgment may be proper and necessary to protect against any loss, damage or destruction to the building or any other insurable portion of the demised premises. The Lessee may be responsible for any deductible amount not covered by Lessor's insurance, up to \$25,000 per occurrence, for any loss, damage or destruction of the building attributable to the acts of its employees or others under its supervision. Lessee shall maintain sufficient commercial general

Section 12. Insurance – continued.

liability insurance, in the amount of or greater than One Million Dollars (\$1,000,000) to protect both Lessor, as named additional insured, and the Lessee from all claims for property damage, and or personal injury, including death, whether the claims are under a workmen's compensation act or otherwise, which may arise from the Lessees operations, practices or by visits from the public under this lease. Lessee shall also maintain personal property insurance sufficient to cover any damage or injury to Lessee's equipment or other personal property on the premises owned by the Lessee, and covered by the terms of this lease. Lessee shall file certificates of this insurance with Lessor, if Lessor so requires, on 30 days' written notice to Lessee. The Lessor and the Lessee hereby mutually waive as against each other any claim, action or cause of action for any loss, cost, damage or expense which may arise during the term hereof as a result of occurrence of perils covered by the Minnesota Standard Fire Insurance Policy and extended coverage endorsements.

13. Default. If default shall be made by Lessee or Lessee's successors or assigns in the payment of the rent herein reserved, and that default shall continue for sixty (60) days after notice thereof in writing to Lessee or Lessee's successors or assigns; or if a breach other than in the payment of rent shall be made in the terms and conditions herein to be performed by Lessee or Lessee's successors and assigns, and the breach shall continue for 60 days after notice thereof in writing to Lessee: then and in either event the right of Lessee to the possession of the demised premises shall terminate upon the expiration of an additional 30 days at option of Lessor, and the mere retention or possession thereafter by Lessee shall constitute a forcible detainer, and if Lessor so elects, but not otherwise, this lease shall thereupon terminate.

Upon termination pursuant to this Section, the Lessor may lease or re-let the premises in whole or in part, or the buildings and improvements thereon, to any tenant or tenants that may be satisfactory to Lessor for any duration and for the best rent, terms, and conditions as Lessor may obtain. The acceptance of any tenant or the making of any lease by Lessor shall be conclusive of the exercise of proper discretion by Lessor. In the event of a re-entry, Lessor shall credit the rent actually collected by the Lessor from such re-letting on the rentals stipulated to be paid under this lease by the Lessee from time to time, and may collect from the Lessee any balance remaining due from time to time on the rent reserved under this lease, charging to the Lessee such reasonable expenses as the Lessor may expend in putting the premises in tenantable condition.

Lessor shall not be under any obligation to repossess the demised premises during any period wherein Lessee is in default, and the foregoing provisions regarding the repossession and management of the building and improvements and the disposition of rents thereof by Lessor are made to operate only in the event Lessor shall elect to repossess the premises.

14. Waiver of Consent. The failure of the Lessor or Lessee to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any rights or remedies that the Lessor or Lessee may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

15. Ownership and Possession. Lessor covenants that it is lawfully seized of the demised premises and has full right and power to enter into this lease for the full term and upon all the conditions herein contained, and will deliver full and complete possession of the demised premises upon the commencement date of the lease, and that Lessee, on paying the said rent and performing the covenants agreed to be performed, shall and may peaceably and quietly have, hold and enjoy the demised premises for the said term and for the use and purpose leased hereunder. Lessor covenants that the Lessee at all times shall have unobstructed and adequate means of ingress and egress between each of the entrances to the demised premises and a public street or public highway.

16. Notices. Whenever notice, demand or communication shall be required to be given to the Lessee, it shall be deemed sufficient for that purposes to deliver by means of overnight delivery by established company, or mail such notice by certified mail, return receipt requested, to Lessee addressed to: Independent School District #709, 215 North First Avenue East, Duluth, Minnesota 55802 or as Lessee may from time to time designate in writing, and notice given as aforesaid shall be sufficient service thereof.

Whenever notice, demand or communication is to be given to or made on the Lessor, it shall be deemed sufficient for the purpose to mail by certified mail, return receipt requested, such notice to the Lessor addressed to: Northwood Children's Services, 714 West College Street, Duluth, Minnesota 55811, or as Lessor may from time to time designate in writing and notice given as aforesaid shall be sufficient service thereof.

17. Other Matters. The schedule attached hereto is a part of the lease and shall supersede any inconsistent provisions set forth hereinabove.

IN WITNESS WHEREOF, the parties hereto have executed this lease and affixed their seals thereto, the day and year first above written.

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NORTHWOOD CHILDREN'S SERVICES  
Lessor

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INDEPENDENT SCHOOL DISTRICT No. 709  
Lessee

\_\_\_\_\_  
Dr. Patrick Johns, Board Chair      Date

\_\_\_\_\_  
Rosie Loeffler-Kemp, Board Chair      Date

\_\_\_\_\_  
Richard Wolleat,      Date  
President & Chief Executive Officer

\_\_\_\_\_  
Josh Gorham, Clerk of the Board      Date