

LEASE

THIS LEASE is made and entered into as of _____, 2018 (hereinafter "Lease"), by and between **THE HOME BUILDERS ASSOCIATION OF NORTHERN KENTUCKY, INC.** (hereinafter "Landlord") and **BOONE COUNTY BOARD OF EDUCATION** (hereinafter "Tenant").

WITNESSETH

The parties agree that this Lease sets forth all agreements, covenants and conditions, expressed or implied, between the parties and supersedes any prior oral or written agreements between the parties with respect to the premises hereinafter described; PROVIDED HOWEVER, to be effective, it must be approved by the Kentucky Department of Education, which approval will be sought promptly by Tenant.

1. **Demised Premises.** Landlord leases to Tenant and Tenant leases from Landlord, on the terms and conditions set forth in this Lease, the following portions of the facility located at 2751 Circleport Drive, Erlanger, Kentucky 41005 (the "Building"):

See the drawing attached hereto and incorporated herein as Exhibit A, wherein the blue shaded area is the Demised Premises, along with the right to use on a non-exclusive basis in common with other occupants of the Building the parking lot, drives, sidewalks, entries, exits, restrooms, kitchen, and any other spaces established by Landlord for use by all occupants of the Building, (hereinafter collectively referred to as the "Demised Premises").

Tenant shall have as its exclusive space the rooms shaded blue and the rooms marked with diagonal hash marks, the latter to be used for a permanent and separately secure office for Tenant's administrative and support staff and conference room. Tenant shall have unfettered access to the rooms marked with horizontal lines for use as first aid rooms.

The parking lot shall be configured by signage or striping for school buses so that students can disembark from the bus and enter into the building without having to cross in front of the bus or cross traffic.

2. **Term and Commencement.**

(A) This Lease shall be effective on the date Tenant receives a fully executed original of this Lease and all documents (including, but not limited to, the attached exhibits) required to be delivered to Tenant concurrently with the execution of this Lease (hereinafter "Execution Date").

(B) The length of this Lease shall be twenty (20) years if renewed annually by Tenant and shall expire on the last day of the month in which the twentieth (20th) anniversary of the Commencement Date as hereinafter defined occurs or as otherwise terminated as herein provided (hereinafter "Expiration Date"). The term of this Lease shall commence on the

Commencement Date as hereinafter defined and expire on the Expiration Date (hereinafter "Term"). Notwithstanding the aforesaid provision, Tenant shall have the right, in its sole and absolute discretion, to terminate this Lease prior to each anniversary date of the Lease. In the event Tenant shall elect to terminate this Lease, Tenant shall notify Landlord in writing of its election to terminate at least three (3) months prior to the applicable anniversary date of the Lease. The initial Commencement Date shall be the date the Boone County Board of Education or the Kentucky Department of Education approves this Lease, whichever occurs later. Thereafter, the Term of this Lease shall run annually, if renewed by Tenant, July 1 through June 30 each one year Term of this Lease.

- (C) Any holding over by Tenant shall not operate, except by written agreement, to extend or renew this Lease or to create a new lease, but in the case of any such holdover, Landlord's remedies shall be limited to either the immediate termination of Tenant's occupancy or the treatment of Tenant's occupancy as a month-to-month tenancy.

3. **Rent.** Tenant agrees to pay Landlord throughout the Term rent (hereinafter "Rent"), payable in advance in annual installments, on the first business day of each calendar year commencing with the Commencement Date as follows: One Dollar (\$1.00). Operating expenses consistent with use by Tenant as the "Project" as defined in Section 6 below, including maintenance, taxes, insurance, and utilities, are Landlord's responsibility.

4. **Title and Quiet Possession.** Landlord covenants that Landlord has marketable and indefeasible fee simple to the Demised Premises described in Exhibit "A" herein and has full right and lawful authority to enter into this Lease; that the said premises are free and clear of and from all liens, restrictions, leases, encroachments, conditions, reservations, easements and encumbrances, except as of record; and that there are no laws, ordinances, governmental rules or regulations or title restrictions or zoning or other matters which will restrict, limit or prevent Tenant's use of the Demised Premises for the purposes set forth herein; and that so long as Tenant is not in monetary default hereunder, Tenant shall have quiet and peaceful possession and enjoyment of the Demised Premises, and of all easements, rights and appurtenances thereunto belonging, subject to the rights of the other occupants in the Building.

5. **Mechanic's Liens.** Tenant shall not have the power to subject the interest of Landlord in the Demised Premises to any Mechanic's or Materialmen's Lien or lien of any kind. Tenant will not permit or suffer to be filed or claimed against the interest of Landlord in the Demised Premises during the term of this Lease, any lien or claim of any kind, and if such lien be claimed or filed, it shall be the duty of Tenant, within thirty (30) days after the filing of such lien to cause the Demised Premises to be released from such claim, either by payment or by the posting of bond or otherwise causing the lien to be released.

6. **Use of Premises.**

- (A) Following the Execution Date of this Lease, Tenant may use the Demised Premises solely for the operation of the "Project" as that term is defined in that certain Work Ready Skills Initiative Funding Agreement with Landlord as the Recipient dated _____, 2018.
- (B) Tenant shall not dispose of, treat or bring onto and abandon any hazardous substance (as hereinafter defined) onto the Demised Premises nor shall Tenant bring any fill materials onto the Demised Premises which contain a reportable quantity (as defined herein) of any hazardous substance. For purposes of this Lease, the term "hazardous substance" means any one (1) or more of the following: (1) any substance deemed hazardous under Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA); (2) any other substance deemed hazardous by the United States Environmental Protection Agency pursuant to Section 102(a) of CERCLA; (3) petroleum (including crude oil or any fraction thereof); (4) any substance deemed hazardous pursuant to Section 1004(5) of the Resource Conservation and Recovery Act of 1976; or (5) any other hazardous or toxic substance, material, compound, mixture, solution, element, pollutant or waste regulated under any federal, state or local statute, ordinance or regulation. For purposes of this Lease, the term "reportable quantity" shall have the meaning given to such term in, and shall be those quantities specified by the administrator of the United States Environmental Protection Agency pursuant to Section 102 of CERCLA.
- (C) Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right to occupy and use any portions of the Demised Premises that are not then in use by Tenant for its operation of the Project (*e.g.*, Landlord's use of a classroom space to hold meetings of its members, so long as Tenant would not otherwise be using such space at such time). Landlord and Tenant agree to cooperate in the scheduling of activities in the Demised Premises and Common Areas with the understanding that the Tenant's operation of the Project will take priority as it relates to the Demised Premises.
- (D) Landlord shall be responsible for utilities, garbage, water, sewer, janitorial, and supplies in connection with janitorial and restrooms.
- (E) Landlord shall abide by all applicable Boone County, Kentucky Board of Education policies during the Term as may be modified from time-to-time and communicated by Tenant to Landlord, including, without limitation, those related to a code of conduct, firearms, alcohol, drugs, background checks, and registered sex offenders.

7. **Common Areas.**

- (A) Tenant and Tenant's employees, students and visitors shall have the right, in common with all others granted similar rights by Landlord, to the non-exclusive use of Common Areas provided by the Landlord from time to time for the Building, including, without limitation, the lobby, restrooms and breakroom.
- (B) Tenant's consent shall not be required for Landlord to make changes, revisions, additions, reductions or modifications thereto, including the sale of any portion of the Building.
- (C) Landlord may make rules and regulations for the Common Areas, including the parking area, and may change the same from time to time to which Tenant agrees to conform.
- (D) Landlord shall operate, manage, equip, light, repair and maintain the Common Areas for their intended purposes in such manner as Landlord shall in Landlord's sole discretion determine and Landlord may from time to time change the size, location, nature and use of any Common Area and may make installations therein and move and remove the same. Landlord may at any time close temporarily any Common Area to make repairs or changes or to discourage non-permitted parking.
- (E) Landlord agrees to keep the Common Areas clean and well lighted, to remove any snow from the parking areas and driveways as promptly as possible.

8. **Damage or Destruction of Premises and Insurance.**

- (A) In the event the Building should be damaged by fire, explosion or any other casualty or occurrence covered by Landlord's insurance to an extent which shall be twenty-five percent (25%) or less of the cost of replacement of the Building, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage. In no event shall Landlord be required to repair or replace Tenant's fixtures, furnishings or floor coverings and equipment.
- (B) In the event the Building should be damaged by fire, explosion or any other casualty or occurrence, and (i) such casualty or occurrence shall not be covered by Landlord's insurance, or (ii) the Building should be damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof, the Landlord may elect either to repair or rebuild the Building or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage.
- (C) If the casualty, repairing or rebuilding (whether under Subsection (A) or

(B) hereof) shall render the Demised Premises untenable, in whole or in part, a proportionate abatement of the Rent shall be allowed from the date when the damage occurred until the date Landlord completes the repair or rebuilding or, in the event Landlord elects to terminate the Lease, until said date of termination, which shall not be less than thirty (30) days nor more than sixty (60) days after said notice, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Building.

- (D) Landlord shall maintain a minimum of \$1,000,000 liability insurance respecting the Demised Premises with Tenant as a co-named insured.

Tenant shall include the Demised Premises as one of its facilities on its property, casualty, contents, and liability insurance.

9. **Default and Termination of Lease.** If the Rent or any part thereof shall remain unpaid for a period of ten (10) days after it shall become due or if Tenant shall fail to keep any of the other covenants or agreements contained in this Lease or Tenant shall fail to continue to participate in the Project in the manner that was agreed to by the parties, Landlord shall give Tenant a written notice of such default to be served as hereinafter provided and if such default shall not be cured by Tenant within thirty (30) days from the date of such service of said notice, Landlord shall then be entitled to the remedies provided for hereafter subject to the provisions of this paragraph. A default on the part of Tenant in the performance of any covenant or agreement hereunder, except for a default in the payment of rent hereunder, which has not been cured within thirty (30) days from the date of service of said notice shall not entitle Landlord to the remedies provided for hereafter if Tenant has in good faith commenced properly to rectify the same and continues to prosecute the same to completion with diligence and continuity.

In the event of a default as set forth above, Landlord may terminate this Lease, may proceed with legal remedies to collect unpaid rentals or may enter upon the Demised Premises by summary proceedings or otherwise, including by changing the locks without initiating summary proceedings (provided that Landlord does not breach the peace in doing so), expelling Tenant and reletting the Demised Premises at the best rent obtainable, as determined by Landlord, making reasonable efforts therefor, and receive the rent therefrom and Tenant shall remain liable for the equivalent of the amount of all rent reserved herein, less the amounts received by reletting, if any, after deducting therefrom the reasonable costs of obtaining possession of the Demised Premises and preparing them for reletting.

All permitted improvements of every kind placed upon the Demised Premises by Tenant shall, upon termination of this Lease, remain with the Demised Premises and shall not be removed therefrom by Tenant. Upon termination of this Lease, Landlord shall be the owner of and shall have all rights to the buildings, fixtures and improvements placed upon the Demised Premises by Tenant and Tenant shall not be entitled to compensation therefor by Landlord.

10. **Assignment and Subletting.** Tenant may not assign all or any part of this Lease without the prior written consent of Landlord.

11. **Notices.** When either party desires or is required to give notice to the other in connection with and according to the terms of this Lease, said notice shall be given by personal delivery thereof to the other party or shall be given by registered or certified mail and, in the event of mail, it shall be deemed given when it shall be deposited in the United States mails, with sufficient postage prepaid thereon to carry it to its addressed destination and such notices shall be addressed as follows:

For Landlord: **The Home Builders Assoc. of NKY**
 2751 Circleport Drive
 Erlanger, Kentucky 41005
 Attn: Executive Vice President

For Tenant: **Boone County Board of Education**
 8330 Highway 42
 Florence, Kentucky 41042
 Attention: Superintendent

Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is to be given, but no such change shall be effective unless and until it shall have been accomplished by written notice given in the manner set forth in this paragraph.

12. **Miscellaneous.**

- (A) It is understood by and between Landlord and Tenant that all agreements and understandings of any character heretofore made between them are embodied in this Lease and no changes shall be made to this Lease unless the same shall be in writing and duly signed by the parties hereto in the same manner and form as this Lease has been executed.
- (B) This Lease sets forth the full and complete agreement and understanding of the parties as of the date hereof and completely supersedes any and all prior discussions, understandings and agreements with respect to the rights and obligations of the parties relating to the subject matter of this Lease.
- (C) The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions thereof, and the Lease shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- (D) This Lease shall be capable of being executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- (E) The captions, headings and titles appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraph.

- (F) This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Kentucky. Any action arising out of this Lease, or any claim breached hereof, shall only be brought in a court of competent jurisdiction located in Boone County, Kentucky. The parties hereby consent to jurisdiction over their persons and the subject matter of such actions and property venue lying in such courts.
- (G) The parties may at any time at the request of either one promptly execute duplicate originals of an instrument, in recordable form, which shall constitute a short form of this Lease, setting forth a description of the Demised Premises, the term of this Lease and any portion thereof that either party may request.
- (H) All the provisions of this Lease shall be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof, and all the provisions hereof shall bind and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
- (I) No amendment or modification of this Lease shall be effective unless in writing executed by a duly authorized representative of the Tenant.
- (J) In the event of any litigation between Tenant and Landlord to enforce any provision of this Lease or any right of either party hereto, the unsuccessful party to such litigation shall pay the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein. Moreover, if either party hereto without fault is made a party to any litigation instituted by or against any other party to this Lease to the extent permitted by law, such other party shall indemnify Landlord or Tenant, as the case may be, against and save it harmless from all costs and expenses, including reasonable attorneys' fees, incurred by it in connection therewith.
- (K) All periods of time shall include Saturdays, Sundays and legal holidays; provided, however, if the last day to perform any act or give notice falls on a Saturday, Sunday or legal holiday, then such act or notice shall be timely performed if given on the next succeeding day.
- (L) This Lease shall not be recorded, but a Memorandum of Lease describing the Demised Premises and the term of this Lease and renewal rights, if any, may be recorded by either party. All governmental charges attributable to the execution or recording of the Memorandum of Lease shall be charged to and be paid by the party desiring same.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed as of the dates adjoining their respective signatures.

(LANDLORD)

(TENANT)

**THE HOME BUILDERS ASSOCIATION
OF NORTHERN KENTUCKY, INC.**

**BOONE COUNTY BOARD OF
EDUCATION**

**BY: _____
Brian A. Miller,
Executive Vice President**

**BY: _____
C. Ed. Massey, Chair**

Date

Date

EXHIBIT "A"

"Demised Premises"

**[See attached drawing indicating the rooms that are used
for the operation of the Enzweiler Building Institute.]**

[illegible]

FLOOR PLAN CONCEPT SCALE 1/8" = 1'-0"
HOME BUILDERS ASSOCIATION
STEEL DIRECTOR'S DRIVE SCRAMBLER, HUNTER

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