

VILLAGE OF YELLOW SPRINGS, OHIO

RESOLUTION 2024-03

AUTHORIZING THE INTERIM VILLAGE MANAGER TO ENTER INTO A LEASE AGREEMENT
FOR 201 SOUTH WALNUT STREET

Whereas, the Village of Yellow Springs owns the building located at 201 South Walnut Street (the "Property") in Yellow Springs; and

Whereas, the previous tenant leasing the Property terminated their lease agreement, creating a vacancy; and

Whereas, the former Village Manager, having given public notice, conducted an open, public process to solicit competitive offers for a new lease of the subject property, and, following an extensive vetting process, the current Interim Village Manager has identified the maker of the best bid for said lease; and

Whereas, the Property needs extensive repair and the Yellow Springs Community Foundation has responded as the best bidder and is willing to financially contribute to and coordinate the repairs to the Property,

NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS DOES HEREBY RESOLVE THAT:

Section 1. We hereby accept the offer of Yellow Springs Community Foundation as best bidder to lease the Property.

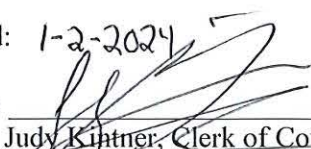
Section 2. The Interim Village Manager is authorized to distribute \$60,000.00 to the Yellow Springs Community Foundation as a tenant improvement allowance under the terms of the lease between the parties in order to fund the cost of repairs to the Village-owned Property.

Section 3. The lease shall be subject to the terms defined in the attached Exhibit A and the Interim Village Manager is hereby authorized and directed to execute said lease agreement on behalf of the Village.

Section 4. This resolution shall take effect immediately upon approval by Council.


Kevin Stokes, President of Council

Passed: 1-2-2024

Attest: 
Judy Kintner, Clerk of Council

ROLL CALL:

Kevin Stokes __Y__

Gavin DeVore Leonard __Y__

Brian Housh __Y__

Carmen Brown __Y__

Trish Gustafson __Y__

LEASE AGREEMENT

This Lease Agreement (hereinafter the "Agreement") is entered into this _____ day of _____, 20____ (the "Effective Date") by and between the Village of Yellow Springs, 100 Dayton Street, Yellow Springs, Ohio 45387 (hereinafter the "Village") and the Yellow Springs Community Foundation, P.O. Box 55, Yellow Springs, Ohio 45387 (hereinafter "Lessee" or "YSCF") (the Village and Lessee may be referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

Whereas, the Village owns the former Yellow Springs School Board property located at 201 S. Walnut Street (hereinafter the "Building" or "Premises" or "Leased Premises");

Whereas, YSCF desires to lease the Building for the purpose of the YSCF offices and community meeting space;

Whereas, the Parties agrees the Building needs repairs prior to YSCF taking possession, and the Parties intend to share the cost of repairs with YSCF managing the repair work;

Whereas, the Parties wish to enter into an agreement for the repair work as well as a lease pursuant to the terms and conditions set forth herein;

Now, therefore, in exchange for and consideration of mutual promises herein, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

SECTION 1. RECITALS

The above recitals are true and correct and are hereby incorporated as terms and conditions of this Agreement.

SECTION 2. PREMISES

The Village hereby leases to Lessee, and Lessee hereby leases from the Village, the property located at 201 S. Walnut Street.

SECTION 3: TERM

This Agreement shall be for an initial term of three (3) years beginning on the date of execution ("Lease Commencement Date") with the first rent payment due on the 1st day of July, 2024 ("Rent Commencement Date") and ending on the 30th day of June, 2027 (the "Initial Term"). At the end of the Initial Term, the Parties may agree in writing to renew the Agreement for 3 (three) additional five (5) year Terms ("Renewal Terms"). Lessee shall notify the Village of its desire to renew the Lease in writing not less than sixty (60) days prior to the end of the Initial Term.

The Parties will enter into the Agreement in advance of the Rent Commencement Date in order to allow YSCF to undertake repairs of the Premises prior to occupancy. YSCF will not have access to the property for repairs unless the Agreement has been properly executed.

SECTION 4: RENT

- A. Lessee agrees to pay rent to the Village, monthly, as follows: \$1,500 per month during 2024; every year thereafter on July 1st, beginning with the rent payment due July 1, 2025, the monthly rent shall increase by three percent (3%).
- B. The full amount of rent owed for the first month shall be due July 1, 2024 ("Rent Commencement Date"). Lessee shall submit each monthly rental payment to the Village Manager in accordance with the procedures for delivery of written notices set forth in Section 9.C.
- C. Rent is due the first day of each month. If rent is not paid by the fifth (5th) day of each month, Lessee shall pay a late charge to the Village of five percent (5%) of the monthly rent.
- D. In the event the Parties choose to exercise the right of renewal noted in Section 3 above, the amount of monthly rent will be negotiated at that time.

SECTION 5: RENOVATIONS OF THE LEASED PREMISES

- A. Lessee shall oversee renovation of the Building to include the following ("Authorized Repairs"):
 - a. Electric Service: Update electric service including removing the water lines above and next to the panel location; replace old florescent lighting on the main floor with updated office grade lighting
 - b. Mold Remediation: Remove all of the materials holding moisture and mold. Remove carpet main floor and basement; basement – remove temporary walls, paneling, drop ceiling and wood closet structure – return basement to a utility basement. The Village will remove office furniture from the basement prior to renovations occurring.
 - c. Secure Egress: New door and hardware for backdoor of main floor and secure current basement door
 - d. Plumbing Repair: Move waterlines from in front of the electric panel, remove entry and corner bathroom; create a new ADA compliant bathroom in the general location of the current corner bathroom
 - e. HVAC: Conduct an annual Service, filters and duct cleaning

- f. Demo and Update Main floor for Occupancy: Remove temporary cabinet / walls, refinish wood floor, repair & paint walls and ceiling, polish wood bookcases and paneling
- B. Within 30 days of the Lease Commencement Date, the Village will provide \$60,000.00 to the Lessee as a Tenant Improvement Allowance. Lessee agrees to acquire the Village Manager's pre-approval regarding selected contractors and scope of work for the renovations outlined herein. All contractors selected to perform renovations on the Property must be licensed and bonded and maintain sufficient insurance to the satisfaction of the Village Manager. The Village shall be named as an Additional Insured on the insurance of all contractors working on the Property.
- C. Lessee will coordinate any and all donations for improvements to the Premises with full accounting to the Village at the completion of the work.
- D. Unforeseen circumstances with regard to the structural integrity of the Property will be addressed at the Village's discretion and at the Village's cost, separate from the Tenant Improvement Allowance. If an unforeseen issue is discovered that renders Tenant's use of the structure impossible, and the Village does not undertake repairs, Lessee shall have the right to immediately terminate this Lease and return the Premises to the Village in accordance with Section 7(D). Lessee shall not initiate any such repairs without the written consent of the Village Manager.

SECTION 6: USE OF THE LEASED PREMISES

- A. Lessee shall maintain the leased Premises in a clean and safe condition and shall not suffer waste or nuisance in the Premises or surrounding property. All storage of equipment and other materials will be done in an orderly, clean, safe, and attractive manner. All waste and junk shall be removed from the leased Premises promptly.
- B. With the exception of the Authorized Repairs outlined herein, Lessee shall not construct any permanent improvements on the Premises without the prior written approval of the Village. Any improvements which are affixed to the Premises and may cause damage to the same upon removal shall become the sole property of the Village upon termination of this Agreement.
- C. Lessee may post reasonable signage, as determined in the Village's sole discretion, on the exterior and interior of the Premises. Any signage must be compliant with all applicable laws and regulations for such signage. Lessee acknowledges that there are signage requirements and approval processes in place for signage placed in the Village of Yellow Springs and agrees any signage placed on or in the Premises will be compliant with those processes and regulations. Interior signage must similarly comply with all applicable safety laws, regulations and rules.
- D. The Village may enter the Premises with reasonable notice to Lessee of the Village's purposes for entry. The Village may enter the Premises for any reasonable business or governmental purpose, including but not limited to: fire inspections, routine maintenance or repairs, and compliance inspections.

SECTION 7: TERMINATION OF THE AGREEMENT

- A. If Lessee breaches any of Lessee's covenants or agreements under this Agreement, the Village may, at its option, terminate this Agreement without prejudice to any right of action it may have for unpaid rent or other breach of the Agreement by delivering written notice to Lessee of immediate termination.
- B. If the Village breaches any of the Village's covenants or agreements under this Agreement, the Lessee may, at its option, terminate this Agreement without prejudice to any other right of action it may have by delivering written notice to the Village of immediate termination.
- C. The Village shall be entitled to terminate this Agreement by providing a minimum of one hundred twenty (120) days' prior written notice to Lessee of termination in the event the Village determines, in the Village's sole discretion, that the Premises are required for any public purpose. In that case, the Village shall notify Lessee in writing that the Premises are required for a public purpose and shall allow Lessee a reasonable period of time to remove Lessee's personal property located therein.
- D. No more than thirty (30) business days following the effective date of the Agreement's termination, Lessee shall return the Premises to the same condition in which the Premises existed on the date Lessee took possession thereof plus the Authorized Repairs defined in Section 5 herein and remove all of Lessee's personal property stored in the leased Premises, and surrender the leased Premises to the Village. Should Lessee fail to remove its personal property from the leased Premises within that timeframe, the Village may empty the leased Premises and dispose of remaining personal property therein without further notice to Lessee or liability to any party for loss or damage to any property located in the leased Premises. Lessee shall continue to pay the Village rent for the leased Premises through the date the leased Premises are emptied and surrendered to the Village. Lessee shall pay any additional costs incurred by the Village to empty the leased Premises and return the Premises to the same condition in which the Premises existed on the date Lessee took possession thereof, including but not limited to costs the Village incurs in storing any personal property Lessee fails to remove from the Premises, if the Village elects to do so. Nothing in this Agreement shall be interpreted as requiring the Village to protect, secure, or store any property of Lessee or any third-party which remains in the Premises upon the expiration of thirty (30) business days following termination of the Lease.
- E. Termination of the Agreement shall not relieve Lessee of its duty to pay all rent and other charges due and owing to the Village through the date the leased Premises is fully emptied and surrendered to the Village.

SECTION 8: VILLAGE'S COVENANTS AND RESPONSIBILITIES

- A. The Village shall maintain the exterior of the building, including necessary roof or window repairs. The Village shall maintain the concrete walks and entry steps of the building. The Village shall mow the Property, but shall not be responsible for any other grounds maintenance, nor is the Village responsible for snow removal.
- B. Lessee shall have possession of the leased Premises for the applicable Term so long as Lessee satisfies all covenants and responsibilities imposed by this Agreement. Subject to the other terms and conditions set forth herein, the Village shall not unreasonably prevent Lessee from using the leased Premises so long as Lessee follows this Agreement and

complies with all applicable federal, State and local laws, rules and regulations; provided, however, the Village shall be entitled to terminate this Agreement in the manner provided in Section 7 above if the Premises are required for a public purpose, as determined by the Village in its sole discretion.

- C. Should the leased Premises become unfit for use, as determined in the Village's sole discretion, the Village is not required to repair or restore it if, in its absolute discretion, the Village determines repair or restoration is uneconomical.
- D. Lessee shall contact the Village Manager, or his or her designated representative, to report all maintenance and repair issues.

SECTION 9: LESSEE'S COVENANTS AND RESPONSIBILITIES

- A. Lessee shall pay rent and other charges as required by, and as the same become due and owing under, this Agreement.
- B. Lessee shall use the leased Premises in a safe and proper manner, abiding by all applicable laws, rules and regulations as established by the Village, and any other governmental or regulatory authority or agency. Lessee shall obey all laws, regulations, and orders of all governmental authorities or agencies, respecting Lessee's use of the leased Premises and any materials kept therein. Lessee will not use or occupy the leased Premises for any unlawful purpose.
- C. Lessee shall specifically:
 - 1) Maintain, at its sole expense, the interior, non-structural portions of the leased Premises in a safe and clean condition, removing and safely disposing of all debris and other waste therein.
 - 2) Not construct any improvements to the leased Premises without the prior written approval of the Village with the exception of the Authorized Repairs. Any improvements which are affixed to the structure and will cause damage to the structure upon removal shall become the sole property of the Village upon the termination of this Agreement.
- D. Lessee shall neither assign this Agreement nor sublet the leased Premises without the Village's prior written consent.
- E. Lessee shall permit the Village and/or its public officials, employees and/or agents to enter the leased Premises at all times to examine its contents and make repairs in accordance with the terms and conditions set forth herein.
- F. Lessee shall surrender the leased Premises to the Village upon termination of the Lease, and return the Premises to the same condition in which the Premises existed at the time Lessee took possession thereof, excepting ordinary wear and tear and damage unrelated to Lessee's occupancy of the leased Premises.
- G. Lessee hereby agrees to indemnify, defend and hold harmless the Village and all of its officers, representatives, agents, employees, successors and assigns (collectively, the "Released Parties") from and against any and all claims, actions, losses, damages, fines, penalties, liability and expense (including reasonable attorneys' fees) in connection with damage to real or personal property, access to the Building, loss of life and/or personal injury arising out of, or in any way related to the Building, this Agreement or Lessee's occupancy or use of the leased Premises.
- H. Lessee shall, at its expense, maintain with an insurance company authorized to do business in the State of Ohio, Comprehensive General Liability insurance in a sum of not

less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage. Upon Lessee's execution of this Agreement, Lessee shall furnish the Village with a copy of a certificate(s) of insurance demonstrating compliance with this insurance requirement, which shall name the Village of Yellow Springs as an additional insured.

- 1) Any Lease Agreement submitted without a copy of the requisite certificate of insurance as described above shall not be executed by the Village and, if executed inadvertently, shall be considered null and void.
 - 2) Further, all insurance policies procured to comply with this paragraph must contain a provision requiring thirty (30) days' prior written notice to the Village in the event of suspension, cancellation or diminution in coverage.
- J. Lessee is solely responsible for the safety and maintenance of its personal property in and other contents of the leased Premises.

SECTION 10: MISCELLANEOUS PROVISIONS

- A. Utilities. Village will provide utilities at no cost to Lessee, including gas, electric, water, sewer, trash and Village-provided Wi-Fi, if available.
- B. General Maintenance. Lessee is responsible for general maintenance of the Premises.
- C. Disclaimers. Lessee accepts the leased Premises as it exists as of the Effective Date. The Village makes no representation regarding the condition or suitability of the Premises for any purpose. Subject to the other provisions of this Agreement, the parties understand and agree that the Village shall have no duty to inspect, repair or maintain any part of the Premises, for the purposes of Lessee's use thereof or this Agreement. Lessee acknowledges and agrees that it has had a reasonable opportunity to inspect the Premises and accepts the property in its "as-is" condition, subject to any and all faults therein and hazards thereon, whether known or unknown. Lessee acknowledges that the Village has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, agreements or guaranties of any kind or character whatsoever, whether express or implied; oral or written; past, present or future; or arising by operation of law with respect to the suitability or safety of any area of the Premises for Lessee's use or any other activity. The Village disclaims responsibility for any loss to person or property arising out of or in any way related to Lessee's occupancy of the leased Premises, including but not limited to:
- 1) Injury to or loss sustained by Lessee or any third party;
 - 2) Damage to real or personal property belonging to Lessee or any third party; and
 - 3) Loss due to fire, storm, the acts or omissions of Lessee or any third party, and any Act of God.
- C. Notice. All notices required by this Agreement shall be written and delivered to the intended recipient-Party personally or by mailing, postage prepaid, to the Party's address as reflected in this Section 9.C. Either Party may change its delivery address at any time by providing written notice of its new address to the other Party. For purposes of this Section, notice is deemed delivered on the earlier of: (i) the recipient-Party's actual receipt of the notice; or (ii) three (3) business days after the notice is deposited in the United States Mail, properly addressed to the recipient-Party and with sufficient postage. Notice under this Section shall be addressed as follows:

For the Village:
Village Manager
Village of Yellow Springs
100 Dayton Street
Yellow Springs, Ohio 45387

For the Lessee:
Yellow Springs Community Foundation
PO Box 55
Yellow Springs, Ohio 45387

- D. Choice of law; Venue. For venue purposes, this Agreement was executed in the Village of Yellow Springs, and the leased Premises are located in the Village of Yellow Springs, Greene County, Ohio. This Agreement shall therefore be interpreted and governed by the laws of the State of Ohio. All actions arising out of or in any way related to this Agreement shall be brought in the State courts of competent jurisdiction located in Greene County, Ohio.
- E. Modification. This Agreement may not be modified, altered, or amended in any manner except in a written agreement executed by both parties.
- F. Severability. If any provision in this Agreement is determined to be invalid or unenforceable for any reason, the remainder of the Agreement shall not be affected by such determination, and shall remain in full force and effect.
- G. Entire Agreement. This Agreement, including any and all attached exhibits, constitutes the entire agreement and understanding of the Parties with respect to the leased Premises and Lessee's permission to use the same, and supersedes any other prior communications, representations, and statements with respect to the transaction contemplated in this Agreement.
- H. Authorization. Each Party represents to the other that it has the full right and authority to enter into this Agreement and, by doing so, violates no other existing agreements to which it is also a party, and that the execution and delivery of this Agreement has been duly authorized by each Party's respective representatives.
- I. Relationship. The Village and Lessee are independent parties. Nothing contained in this Agreement shall be construed to create any special duty, third-party benefit, respondeat superior relationship, limited or general partnership, joint venture or any other similar association or relationship between the Parties.
- J. Successors and Assigns. This Agreement shall inure to the benefit or and bind the Parties' respective successors and assigns.
- K. Force Majeure. In the event that either Party is delayed, hindered in or prevented from the performance of any action required by this Agreement by reason of restrictive governmental laws or regulations; the act, failure to act or default of the other Party; war; pandemic; Act of God; or other reason beyond such Party's control, performance of the required act shall be excused for the period of the delay, and the period of performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be a cause beyond the control of Lessee.
- L. Consent. Neither Party shall unreasonably withhold or delay its consent with respect to any matter for which such Party's consent is required or desirable under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Agreement is executed as of the Effective Date.

a. VILLAGE OF YELLOW SPRINGS

LESSEE

By: _____

Yellow Springs Community Foundation

Title: _____

By: _____

Title: _____
(If not individual lease)

Accepted as to form:

Village Solicitor