

AGREEMENT TO TEMPORARILY OCCUPY 205 CARTER DRIVE PROPERTY

This **AGREEMENT TO TEMPORARILY OCCUPY 205 CARTER DRIVE PROPERTY** (the “**Agreement**”), dated as of ____ day of ____, 2020, by and between **WEST GOSHEN TOWNSHIP.**, a Pennsylvania Township of the second class (the “**Township**”) and **WEST CHESTER UNIVERSITY OF PENNSYLVANIA,**
_____ (the “**University**”)

RECITALS

- A. University intends to enter into a lease with BT Carter Drive LLC for a property and building located at 205 Carter Drive, West Goshen Township (the “Premises”).
- B. University intends to use the Premises for educational purposes during the 2020-2021, specifically as rehearsal space for music students to facilitate social distancing necessitated by the COVID-19 health emergency.
- C. The Property is in the Township’s I-2 Light Industrial Zoning District which does not permit educational uses.
- D. At its public meeting on July 8, 2020, the Township Board of Supervisors adopted a motion authorizing the advertisement and consideration of an Amendment to the Zoning Ordinance which would permit educational uses on the Premises, known as the Planned University Main Campus Overlay District (the “Overlay Ordinance”).
- E. The Township Board of Supervisors further authorized the use and occupancy of the Premises for educational uses under the pending ordinance doctrine, subject to a satisfactory agreement between the Township and University.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties hereto, it is agreed as follows:

- 1. Recitals. The foregoing recitals are incorporated as if set forth at length herein.
- 2. Use and Occupancy. The University may lawfully use and occupy the Premises for University educational uses from the date of occupancy until May 31, 2021.
- 3. Lease. The lease with the Landlord shall be for a term ending no later than May 31, 2021, shall permit the educational use only inside the building on the Premises (except for parking) and, if the Overlay Ordinance is not enacted and effective before May 31, 2021, shall be renewable only with the written consent of Township. A copy of the executed lease in compliance with this Paragraph 3 shall be provided to Township before occupancy of the Premises.
- 4. Compliance with Applicable Law. The University shall comply with all applicable laws, ordinances and regulations regarding use and occupancy of the Premises, including but not limited to obtaining a temporary Township use and occupancy permit for the Premises. The University shall pay all customary Township and governmental permit and inspection fees at the time of permit application.

5. Administrative expenses. University shall reimburse the Township for reasonable administrative expenses, including fees of professional consultants, related to the preparation of this Agreement and any other necessary services related to this Agreement and the Premises, not to exceed a total of \$2,000. University shall pay administrative expenses within sixty (60) days of the date of Township invoices.

6. Defense of Alleged Zoning Violations. The University will defend the Township, its Supervisors, officers, employees, contractors and consultants, from all claims and liabilities related to alleged zoning violations and the use of the Property for educational purposes.

7. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8. Severability. If any term or provision of this Agreement is judicially determined to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement and the remaining terms and provisions shall remain in effect and enforceable.

9. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

10. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11. Assignment. This Agreement shall not be assigned, in whole or in part, by either party without the express written consent of the other party.

12. Successors and Assigns. This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

13. No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction).

15. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Township and University have executed this Agreement as of the day and year first above written.

WEST GOSHEN TOWNSHIP

ATTEST:

By: _____
Casey LaLonde, Manager

WEST CHESTER UNIVERSITY OF PENNSYLVANIA

ATTEST:

By: _____
John Villella, Ed.D., Vice President
for University Affairs and Chief of Staff

APPROVED as to form and legality:

By: _____