

FACILITY USE AGREEMENT
(Stonewall Jackson Middle School and
Engelwood Neighborhood Center)

THIS FACILITY USE AGREEMENT (hereinafter, the “Agreement”) is made and entered as of the Effective Date (hereinafter defined), by and between **THE SCHOOL BOARD OF ORANGE COUNTY FLORIDA**, a corporate body existing under the Constitution and laws of the State of Florida, whose address is 445 West Amelia Street, Orlando, Florida 32801 (hereinafter, (“School Board” or “OCPS”), and **CITY OF ORLANDO, FLORIDA**, a municipal corporation existing under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida 32801 (“City”).

WITNESSETH:

WHEREAS, the School Board is the fee simple owner of approximately 38.49 acres of land in Orange County, Florida more particularly described on **Exhibit “A”** and incorporated herein by reference (collectively, the “School Property”); and

WHEREAS, the City is the fee simple owner of approximately 9.58 acres of land contiguous to the School Property more particularly described in **Exhibit “B”** and incorporated herein by reference (“City Property”); and

WHEREAS, the City operates the Engelwood Neighborhood Center on the City Property, which includes, without limitation, basketball courts, volleyball courts, and a softball court as more particularly depicted on **Exhibit “C”** attached hereto and incorporated herein by reference (“Site Plan”); and

WHEREAS, the City and School Board desire to maximize the use of their contiguous properties in accordance with the terms and conditions hereof; and

WHEREAS, subject to the terms herein, the City agrees to allow the School Board exclusive use of the City Facilities (hereinafter defined) during School Hours (hereinafter defined) and the School Board agrees to allow the City use of the School Facilities (hereinafter defined) during all other times not specifically excluded herein.

NOW THEREFORE, in consideration of mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the School Board hereby covenant and agree to and with each other as follows:

1. **Recitals.** That the foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Definitions.** As used in this Agreement, the following words shall have the following meaning:

a. "Principal" shall mean the principals of any educational facilities located on the School Property.

b. "School" shall mean any educational facilities established and administered by the School Board.

c. "School Term" means and includes days during which student classes are regularly scheduled at the School, but shall not include Saturdays, Sundays, holidays or breaks during which time classes are not in session, with the exception of scheduled School-related activities or functions that occur on such days; specifically, "School Term" shall not include winter break, spring break or summer vacation.

d. "Superintendent" means the Superintendent of Orange County Public Schools.

3. **License to Use.** The City hereby grants to the School Board a license to occupy and use for physical education, at no charge and subject to the terms and conditions contained herein, certain athletic facilities and real property more particularly identified the Site Plan as the "City Facilities," including, without limitation, the basketball courts, volleyball courts, softball field, and ingress and egress from and to the parking area (collectively, "City Facilities") during the School Term in accordance with the schedule set forth on **Exhibit "D"** attached hereto and incorporated herein by reference (collectively, "School Hours"), subject to the restrictions set forth in Section 5 hereof. As consideration for School Board's use of City Facilities, School Board agrees to provide access to the track and field located on the School Property ("School Facilities") at no charge to the City after School Hours on dates when School does not have after school sports and activities scheduled for the School Facilities. Such use shall commence as soon as the construction of the School Facilities are complete and shall continue through December 31, 2020.

4. **Term.** From the Effective Date through December 31, 2018 ("School Board Term"), the School Board shall be permitted to utilize the City Facilities, in accordance with the terms and conditions of this Agreement, unless sooner terminated as provided herein. If School Board wishes to extend this Agreement beyond the initial term, School Board shall seek City's written approval for said extension. Orlando City Council's approval of this Agreement shall authorize the Director of its Families, Parks, and Recreation Department to execute such extension agreements on the substantially the same terms and conditions as contained in this Agreement without further approval from the Orlando City Council. Likewise, from the date of the completion of the construction of the School Facilities expected in late 2018, the City shall be permitted to use the School Facilities as outlined herein through December 31, 2020 ("City Term"). School Board's approval of this Agreement shall authorize the School Board Chief Facilities Officer or Director of Real Estate Management to execute such extension agreements on the substantially the same terms and conditions as contained in this Agreement without further approval from the School Board.

5. **Restrictions on Public Usage of City Facilities.** School Board shall control scheduling of the use of the City Facilities and School Facilities during the School Hours during the School Term in accordance with the following schedule:

a. The School Board's restriction of public usage of the City Facilities and School Facilities during the School Term shall be limited to times during the School Hours.

b. Prior to the commencement of each school year, the Principal, or Principal's designee, shall cooperate with the City to provide a written schedule of known or proposed School Sanctioned Activities (defined as outside the School Hours and School Term activities, field days, carnivals, home games, meets, practices, or school related events or functions scheduled or sanctioned by the School Board (collectively, "School Sanctioned Activities") for the upcoming school year, if available. If said schedule is not available or if are otherwise unknown to the Principal in advance, the Principal, or Principal's designee, shall provide thirty (30) days prior written notice to City of said School Sanctioned Activities. In the event said thirty (30) day notice includes a request by the School Board to use the City Facilities for any School Sanctioned Activities, City shall make its City Facilities available if they are not otherwise booked by third parties or programmed by City.

c. At all other times, the City shall have sole and exclusive use of the City Facilities and shall be responsible for the unscheduled individual use, public access and City recreation programs on the City Facilities and shall control, regulate and sublicense such use.

d. At all other times during the City Term, the City shall have sole and exclusive use of the School Facilities and shall be responsible for the unscheduled individual use, public access and City recreation programs on the School Facilities and shall control, regulate and sublicense such use. The City shall take any and all actions reasonably necessary to restrict and regulate the use of the School Facilities to ensure the School Facilities are in suitable condition for use by the School Board during School Hours and for any School Sanctioned Activities, including, without limitation, locking the gates around the School Facilities on a nightly basis, limiting the use of the School Facilities by third party organizations on a fee basis, and otherwise imposing or enforcing any other restrictions reasonably required to ensure the School Facilities experience adequate and sufficient rest periods (collectively, "Use Restrictions").

e. Subject to the limitations set forth herein, the City shall have the exclusive right and privilege of using or authorizing other third party users, organizations, parties, entities, vendors or any other third party (collectively, "Third Party User") to use the City Property or any portion thereof, for any use not otherwise inconsistent with the use of the City Facilities. In the event the City enters into any agreement or understanding with a Third Party User for the City Facilities, the City shall have the exclusive right to retain any and all proceeds from the use of the City Facilities by the Third Party User. Subject to the limitations set forth herein, the School Board shall have the exclusive right and privilege of using or authorizing other Third Party Users to use the School Property or any portion thereof, for any use not otherwise inconsistent with the use of the School Facilities. In the event the School Board enters into any agreement or understanding with a Third Party User for the School Facilities, the School Board shall have the exclusive right to retain any and all proceeds from the use of the School Facilities by the Third Party User.

6. **Maintenance of the Facilities.**

a. Maintenance of City Facilities. City shall be responsible for the general custodial, maintenance, repair and replacement of the City Property and all City Facilities located thereon, including, without limitation, furnishing all necessary labor, materials, and equipment for said maintenance, repair, and care unless damage has been caused by the School Board or staff as referenced herein. City shall be responsible for ensuring that any and all portions of City Facilities are kept in a clean and neat condition during and after the City's use of said City Facilities. At the end of each scheduled use by the School Board of the City Facilities, School Board shall clean the City Facilities upon which trash or litter has been left during the School Board's use. In the event of any damage to the City Facilities during or resulting from the School Board's use of the City Facilities, the School Board shall, at its sole cost and expense, be responsible for any maintenance, repair and replacement of the City Property and all City Facilities located thereon; provided; however, City shall perform said maintenance and bill the School Board the reasonable amount for said repair, replacement and maintenance if so required.

b. Maintenance of School Facilities. School Board shall be responsible for the general custodial, maintenance, repair and replacement of the School Property and all School Facilities located thereon, including, without limitation, furnishing all necessary labor, materials, and equipment for said maintenance, repair, and care unless damage has been caused by the City or staff, or City's use of the School Facilities as referenced herein. School Board shall be responsible for ensuring that any and all portions of School Facilities are kept in a clean and neat condition during and after the School Board's use of said School Facilities. At the end of each scheduled use by the City of the School Facilities, City shall clean the School Facilities upon which trash or litter has been left during the City's use. In the event of any damage to the City Facilities during or resulting from the City's use of the School Facilities, the City shall, at its sole cost and expense, be responsible for any maintenance, repair and replacement of the School Property and all School Facilities located thereon; provided; however, School Board shall perform said maintenance and bill the City the reasonable amount for said repair, replacement and maintenance if so required.

c. Maintenance Request. In the event the City or School Board fail to maintain, clean, repair or replace the City Facilities or School Facilities (collectively, the "Facilities") in accordance with their maintenance or custodial obligations herein, the School Board or City, as applicable, shall promptly provide written notice to the party failing to conduct such maintenance ("Responsible Party") outlining any deficiency, defective or damaged condition, area in disrepair or in need of maintenance or custodial services in or about the Facilities (collectively, "Maintenance Issue") in or about the Facilities ("Maintenance Request"). If the deficiency, defective or damaged condition, area in disrepair is an "on-going minor repair or maintenance" then within thirty (30) days of receipt of the Maintenance Request, the Responsible Party, at its sole cost and expense, shall repair, replace or maintain that certain portion of the Facilities and the Maintenance Issue more specifically identified and outlined in the Maintenance Request. An "on-going minor repair or maintenance" shall be deemed any repair, replacement or maintenance issue that will require the expenditure of less than One Thousand and No/100 Dollars (\$1,000.00) to repair, replace or maintain, which amount shall include all labor, costs and materials. If the deficiency, defective or damaged condition, area in disrepair is a "major capital repair or renovation," then City and School Board shall negotiate and reach agreement upon which party is responsible for the cost and execution of repair/renovation. Notwithstanding the foregoing, in the event any Maintenance Issue shall constitute an emergency

condition or impede the School Board's or City's ability to effectively utilize the Facilities, or any portion thereof, for any use of Facilities as outlined in Section 3 hereof, said party, acting in good faith, shall have the right to cure such Maintenance Issue upon such advance notice as is reasonably possible under the circumstances, or if necessary, without advance notice, so long as notice is given as soon as possible thereafter. In such event, in the case of "on-going minor repair or maintenance," the Responsible Party shall reimburse the party conducting the work for its reasonable costs of curing the Maintenance Issue ("Maintenance Cure Costs") within thirty (30) calendar days following delivery to the Responsible Party of a demand for such reimbursement, which demand shall include reasonable documentation of such Maintenance Cure Costs. The right to cure the Maintenance Issue shall not be deemed to (i) impose any obligation, liability or responsibility on the party who is not deemed the Responsible Party to do so; (ii) render either of the parties liable to other party or any third party for an election not to do so; (iii) relieve the Responsible Party from any performance obligation hereunder; or (iv) relieve the Responsible Party from any indemnity obligation as provided in this Agreement.

7. **Improvements to the Facilities.** Except as otherwise provided herein, School Board shall not construct or install any improvements in the City Property without the prior written consent of the City. Except as otherwise provided herein, City shall not construct or install any improvements in the Scholl Property without the prior written consent of the School Board. Any improvements approved in accordance with this paragraph and installed on the City Property or School Property shall be (i) at the installing party's sole cost and expense; (ii) undertaken in a safe and prudent manner, and (iii) comply with all applicable federal, state, city and county laws, regulations, and ordinances, and such permits that the School Board requires, with respect to the installation, repair, replacement, maintenance and use of City Facilities. All improvements to the City Property shall remain thereon and shall not be removed therefrom by City or School Board unless prior written consent is obtained from the other party.

8. **Signage.** The School Board agrees to provide, at its own cost and expense, a sign located on, or within close vicinity of the City Facilities to advise the public as to the hours during which the City Facilities are reserved for the exclusive use of the School Board. City agrees to provide, at its own cost and expense, a sign located on, or within close vicinity of the School Facilities to advise the public as to the hours during which the School Facilities are reserved for the exclusive use of the School Board.

9. **Operating Requirements.** Each party shall supervise and regulate its use of the Facilities during their respective use times in accordance with this Agreement as amended from time to time, and shall:

a. **Implementation of Security Measures.** Each party, at its sole cost and expense, shall take any and all actions reasonably necessary to implement safety and security measures to maintain the safety and security of the any and all students, staff or visitors of the Schools, including, without limitation, implementing appropriate and adequate supervision mechanisms and any and all other safety and security measures reasonably required by the School Board to provide a safe, secure learning environment for the staff, students and visitors of the Schools.

b. Supervision Responsibilities. Each party, at its sole cost and expense, shall be solely responsible and liable for the providing adequate personnel, staffing or volunteers to ensure the proper supervision of any guests, invitees, visitors, parents, participants, students, employees, agents or contractors on or about the Facilities as a result, directly or indirectly, the School Board's or City's use of the Facilities in accordance with the terms of this Agreement, or any ancillary use thereof, or any actions of the agents, employees, staff or vendors of the School Board or City, as applicable. School Board and City shall exercise commercially reasonable efforts to prevent its representatives, participants, guests and invitees from performing any disorderly conduct or committing or maintaining any nuisance on the Facilities, or using the Facilities, or any portion thereof, in any way so as to interfere with the operation and programs or to the safety of the other visitors or staff of the Engelwood Neighborhood Center or persons residing near the School.

c. Compliance with Rules and Regulations. Each party, at its sole cost and expense, shall comply with and abide by all laws, ordinances, rules, regulations, policies, directives and procedures of the City, State of Florida, federal government, Orange County, and any other governmental entity having jurisdiction over the Facilities, any portion thereof, the City's use of the School Facilities, or School Board's use of the City Facilities in accordance with the terms of this Agreement, including, without limitation, all safety and security protocols, any and all requirements of the Jessica Lunsford Act, zoning, health and sanitary conditions, unless otherwise waived in writing by the other party.

d. Performance of Obligations. Each party shall take such other actions and perform such other obligations as are required or contemplated hereunder including, without limitation, all obligations pertaining to satisfaction of any contingencies of this Agreement or conditions precedent to performance by such party of its obligations hereunder.

e. Discrimination. City shall manage and operate the City Facilities and School Board shall operate the programs performed on the City Facilities on a non-discriminatory basis. School Board shall manage and operate the School Facilities and City shall operate the programs performed on the School Facilities on a non-discriminatory basis.

f. Weekly Report. School Board shall provide City with a weekly report of the total number of students served. Such report shall include the number attended, the age of the participants, and percentage of those students who reside in the Orlando City limits.

g. Utilities. City shall provide, at its sole cost and expense, electrical and water services used; secure, at its own expense, all necessary personnel required to maintain the City Facilities. School Board shall provide, at its sole cost and expense, electrical and water services used; secure, at its own expense, all necessary personnel required to maintain the School Facilities.

10. **Indemnification and Insurance.**

a. City's Insurance and Indemnification. To the fullest extent permitted by law, unless otherwise waived by the School Board in writing, City shall:

i. Exercise its rights and duties hereunder at its own risk and expense.

ii. Subject to the limitations set forth herein, indemnify, defend and hold harmless School Board, its board members, employees and representatives from and against all claims, damages, losses, and expenses, including but not limited to, economic loss, reasonable attorney's fees and expenses, arising out of, in connection with or as a result of exercise by City or any individual or entity claiming by, through or under City, of its rights and obligations set forth in this Agreement, provided that any such claim, damages, losses, or expenses (i) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death, or damage to tangible property of a third party including the loss of use; and (ii) is caused or incurred in whole or in part by the City, its invitees, guests, attendees, participants, or any of its subcontractors, agents, or anyone directly or indirectly employed by City, subcontractors or agents, regardless if caused in part by School Board. This indemnification shall not apply to any claims, damages, losses, and expenses arising from the School Board's sole gross negligence or intentional misconduct. Nothing herein shall be deemed a waiver by the School Board or City of its sovereign immunity rights under the laws of the State of Florida.

iii. City shall maintain throughout the term of the Agreement, a self-insurance program acceptable under Florida law. City shall provide a certificate of self-insurance upon the execution of this Agreement and prior to August 1 of each year during the term of this Agreement. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall City be liable to School Board (or any person or entity claiming under or through School Board) under any contract, negligence, strict liability, or other legal or equitable theory for any amounts in excess of those limits per claim and per occurrence set for tort liability in Section 768.28 of the Florida Statutes which limits are hereby made applicable to all manner of claims against the School Board related to this Agreement and are not confined to tort liability. In the event the City elects to use the School Facilities, the School Board reserves the right to require deductibles and coverages similar to the School Board Insurance Requirements in accordance with Section 10.b.ii and iii hereof.

b. School Board's Insurance and Indemnification. To the fullest extent permitted by law, unless otherwise waived by the City in writing, School Board shall:

i. Exercise its rights and duties hereunder at its own risk and expense.

ii. Subject to the limitations set forth herein, indemnify, defend and hold harmless City, its board members, employees and representatives from and against all claims, damages, losses, and expenses, including but not limited to, economic loss, reasonable attorney's fees and expenses, arising out of, in connection with or as a result of exercise by School Board or any individual or entity claiming by, through or under School Board, of its rights and obligations set forth in this Agreement, provided that any such claim, damages, losses, or expenses (i) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death, or damage to tangible property of a third party including the loss of use; and (ii) is caused or incurred in whole or in part by the School Board, its invitees, guests, attendees, participants, or any of its

subcontractors, agents, or anyone directly or indirectly employed by School Board, subcontractors or agents, regardless if caused in part by City. This indemnification shall not apply to any claims, damages, losses, and expenses arising from the City's sole gross negligence or intentional misconduct. Nothing herein shall be deemed a waiver by the School Board of its sovereign immunity rights under the laws of the State of Florida.

iii. At its sole cost and expense at all times throughout the term of this Agreement, maintain in full force and effect the following insurance, which insurance shall apply to School Board, its invitees, guests, attendees, participants, employees, agents, and subcontractors, and its use of the City Facilities, or any portion of the City Property and shall require any other Third Party User to purchase and maintain similar insurance coverage (collectively, "School Board Insurance Requirements"): (a) Workers Compensation insurance in statutory amounts and Employers Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all School Board employees who will be engaged in the delivery of services, goods and/or improvements in this Agreement; (b) Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate; and (c) Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing services, goods and/or improvements outlined in this Agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. All insurance shall be written with an insurance company licensed to issue insurance in the State of Florida and shall maintain an A.M. Best financial strength rating of A (VI) and shall be primary and not contributory to any other insurance or self-insurance carried or maintained by the City. In the alternative, School Board may provide evidence satisfactory to City that School Board has in place self-insurance which provides substantially the same coverages and protections. School Board shall notify City within thirty (30) days of any material changes or notice of cancellation School Board receives from its insurer on above required insurance.

iv. Furnish and provide evidence of all insurance in the form of a Certificate of Insurance (Acord) and specify any deductible or retention applicable to School Board Insurance Requirements to City prior to the Effective Date of this Agreement and annually thereafter. Failure to have adequate proof of current insurance meeting the requirements of this section or to file such proof with City shall entitle City to immediately suspend the privilege of School Board to use the City Facilities until such proof is furnished and shall warrant termination of this Agreement, provided; that City notifies School Board of School Board's failure to deliver such certificate, and further provided that School Board does not deliver such certificate within ten (10) days after such notice by City.

11. **Notice.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of (i) the date and time the same are personally delivered, transmitted electronically (i.e., facsimile or e-mail); (ii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (iii) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

School Board: The School Board of Orange County, Florida
Facilities Services, Real Estate Management Department
6501 Magic Way, Bldg. 200
Orlando, FL 32809
Attn: Harold E. Jenkins, Director of Real Estate
Telephone: (407) 317-3700 (ext. 2025108)
Facsimile: (407) 317-3792

With a copy to: The School Board of Orange County, Florida
Office of the Legal Services
6501 Magic Way, Bldg. 200
Orlando, FL 32809
Attn: Laura L. Kelly, Esquire
Telephone: (407) 317-3700 (ext. 2025906)
Facsimile: (407) 317-3792

City: Director of Families, Parks and Recreation
City of Orlando
595 North Primrose Drive
Orlando, Florida 32803
Telephone: (407) 246-4319
Facsimile: (407) 246-4038

With a copy to: City Attorney's Office
City of Orlando
400 South Orange Avenue, 3rd Floor
Orlando, Florida 32801
Telephone: (407) 246-2295
Facsimile: (407) 246-2854

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

12. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last of the parties hereto signs this Agreement ("Effective Date").

13. **Modifications and Amendments.** Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by the parties hereto. School Board does hereby confer upon the Superintendent, or Superintendent's designee, the authority to amend this Agreement, provide any consent or approval set forth herein or otherwise exercise any right or election of the School Board granted or reserved herein, without formal approval from School Board, provided such amendment or consent does not substantially alter or modify the terms herein. Further, the Superintendent, or Superintendent's designee, shall

have the authority, without further approval from the School Board, to finalize the form of, and execute, all agreements, easements, contracts, agreements and similar documents set forth in this Agreement. If, in the sole judgment of School Board, such amendment or consent does substantially alter or amend this Agreement, then School Board shall have the option of declaring the amendment or consent void *ab initio*, thus rendering the amendment or consent without any legal force and effect. The City does hereby confer upon the City Families, Parks & Recreation Department Director, upon review and approval of the City Attorney's Office, the authority to amend this Agreement, provide any consent or approval set forth herein or otherwise exercise any right or election of the City granted or reserved herein, without formal approval from City Council, provided such amendment or consent does not substantially alter or modify the terms herein. Further, the Families, Parks & Recreation Department Director shall have the authority, without further approval from City Council, to finalize the form of, and execute, all agreements, easements, contracts, documents necessary to address title issues, closing documents, escrow agreements, letters of credit, agreements and similar documents set forth in this Agreement. If, in the sole judgment of City Council, such amendment or consent does substantially alter or amend this Agreement, then the City shall have the option of declaring the amendment or consent void *ab initio*, thus rendering the amendment or consent without any legal force and effect.

14. **Defaults and Remedies.**

a. **Default by City.** In the event City breaches any provision contained herein or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by City under the terms and provisions of this Agreement and does not remedy the failure within thirty (30) days after receipt by the City of written demand from the School Board to do so unless the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) days, in which case the City shall commence such cure within such thirty (30) day period and diligently proceed to cure the breach, provided that in any event, the breach shall be cured within sixty (60) days after receipt from the non-defaulting party, the School Board, in School Board's sole discretion, shall be entitled to (i) exercise any and all rights and remedies available to School Board at law and in equity, including without limitation the right of specific performance; or (ii) terminate this Agreement with only thirty (30) days prior written notice. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

b. **Default by the School Board.** In the event the School Board breaches any provision contained herein or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by the School Board under the terms and provisions of this Agreement and does not remedy the failure within thirty (30) days after receipt by School Board of written demand from the City to do so unless the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) days, in which case the School Board shall commence such cure within such thirty (30) day period and diligently proceed to cure the breach, provided that in any event, the breach shall be cured within sixty (60) days after receipt from the non-defaulting party, City, in City's sole discretion, shall be entitled to (i) exercise any and all rights and remedies available to City at law and in equity; or (ii) terminate this Agreement with only thirty (30) days prior written notice. Upon any

such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

15. **Termination or Suspension.** Except as otherwise specified herein, either party may terminate or suspend this Agreement without cause upon thirty (30) days prior written notice to the other party. In the event of such termination, cancellation or suspension, all rights, obligations and liabilities created thereunder shall be deemed null and void and of no further force and effect. Both parties agree that a substantial breach of any section of this Agreement shall be a basis for immediate termination. Unless otherwise provided herein, failure of a party to meet its obligations hereunder for a period of ten (10) days after notice and opportunity to cure is deemed a substantial breach hereunder.

16. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party to the extent incorporated into this Agreement.

17. **Waiver.** The failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall not constitute a waiver of either party's right to demand exact compliance with the terms hereof.

18. **Legal Construction.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or holiday, such time for performance shall be extended to the next business day. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103. Except as otherwise set forth herein, the last day of any period of time described herein shall be deemed to end at 11:59 p.m. local time in Orange County, Florida. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph.

19. **Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of Florida, with venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

20. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

21. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy or administrative proceeding, or at trial or on appeal. Notwithstanding the foregoing, nothing contained herein shall be construed or interpreted (a) to alter, amend or waive the School Board's or City's sovereign immunity of the State of Florida, or its agencies, or any defenses thereto, beyond the waiver provided in Section 768.28, Florida Statutes; or (b) as the consent of the School Board or City to be sued.

22. **Counterparts and Facsimile Signatures.** This Agreement may be executed in two or more counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The parties may execute different counterparts of this agreement, and, if they do so, the signatures pages from the different counterparts may be combined to provide one integrated document and taken together shall constitute one and the same instrument.

23. **Relationship of Parties.** This Agreement is solely for the benefit of the parties executing the Agreement, and no rights are intended, nor shall any rights accrue, to any third party unless expressly provided in this Agreement.

24. **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Neither this Agreement, nor any right or obligation of any party arising under this Agreement, may be assigned or delegated without the written consent of all parties.

25. **Participation.** All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any party regardless of which party is deemed to have drafted the Agreement.

26. **Third Party Beneficiary.** Except as otherwise set forth herein, no person other than the parties shall have any rights or privileges under this Agreement, whether as a third-party beneficiary or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

“CITY”

Signed, sealed and delivered in the presence of:

CITY OF ORLANDO,
a municipality duly enacted under the laws of the State of Florida

Printed Name: _____

Printed Name: _____

By: _____

Print Name: _____

As: _____

Date: _____

STATE OF FLORIDA
COUNTY OF: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ as _____ of City of Orlando, a municipality duly enacted under the laws of the State of Florida, who produced _____ as identification or is personally known to me and who acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.

Notary Public

Printed Name: _____

Commission No.: _____

My Commission Expires: _____

[SEE FOLLOWING PAGE FOR SCHOOL BOARD'S SIGNATURE]

Signed, sealed and delivered in the presence of:

“SCHOOL BOARD”

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

Joseph Morgan
Print Name: Joseph Morgan

Nancy L. Canavan
Print Name: Nancy L. Canavan

By: [Signature]
Name: William E. Sublette
Title: Chairman

Dated: 12/20/2016

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 20th day of December, 2016, by William E. Sublette, Chairman of The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, on behalf of The School Board. He is personally known to me or had produced _____ (type of identification) as identification and has acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.



[Signature]
Notary Public
Printed Name: Margarita Rivera
Commission No.: _____
My Commission Expires: _____

WITNESSES:

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a public corporate body and political subdivision of the State of Florida

Margaret P. ...
Print Name: Margaret P. ...

Joseph Morgan
Print Name: Joseph Morgan

By: *Barbara M. Jenkins*
Barbara M. Jenkins, Ed.D.,
as its Superintendent

Dated: 12-15-16

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 15th day of December, 2016, by Barbara M. Jenkins, as Secretary and Superintendent of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board. She is personally known to me or had produced _____ (type of identification) as identification and has acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.



Susan M. Adams
Notary Public
Printed Name: Susan M. Adams
Commission No.: _____
My Commission Expires: _____

Approved as to form and legality by legal counsel to The School Board of Orange County, Florida this 14th day of December, 2016, for its exclusive use and reliance.

Reviewed and approved by Orange County Public Schools Chief Facilities Officer this 14th day of DEC, 2016.

By: *Laura L. Kelly*
Laura L. Kelly, Esquire

By: *John T. Morris*
John T. Morris, Chief Facilities Officer

Exhibit "A"
School Property

Orange County Property Appraiser's Parcel Identification Nos. 30-22-34-0000-0052 and 30-22-34-0000-0053

Description of Existing Engelwood Elementary School Parcel

The land referred to herein below is situated in the County of Orange, State of FL, and is described as follows:

NW 1/4 of NW 1/4 of the SE 1/4 of Section 34, Township 22 South, Range 30 East, together with an easement for ingress and egress over the following described property:

That certain tract or parcel of land, being a part of the NW 1/4 of the SE 1/4 of Section 34, Township 22 South, Range 30 East, Orange County, Florida being more particularly described as beginning at the SE corner of Lot 7, Block 12 as shown on the map of Engelwood Park Unit No. 3 as recorded in Plat Book V, Pages 133 and 134 of the public records of said county; thence S 00°04'40" East, being a prolongation of the West line of Oxalis Street as shown on said plat a distance of 120 feet; thence North 89° 36'17" West a distance of 350 feet more or less to the East line of the NW 1/4 of the NW 1/4 of the SE 1/4 of Section 34, Township 22 South, Range 30 East; thence Southerly along the same a distance of 60 feet; thence South 89°36'17" East a distance of 410- feet more or less to a prolongation of the East line of aforesaid Oxalis Street; thence North 0°04'40" West a distance of 180 feet to the Southwest corner of Lot 1, Block 13 as shown on aforesaid map of Engelwood Park Unit No. 3; thence North 89°36'17" West a distance of 60 feet to the Point of Beginning.

Description of Existing Stonewall Jackson Middle School Parcel

The North 1/2 of the East 1/2 of the Northeast 1/4 of the Southwest 1/4 of Section 34, Township 22 South, Range 30 East, Orange County, Florida.

Together with:

The South Half (S1/2) of the East Half (E1/2) of the Northeast 1/4 of the Southwest 1/4 of Section 34, Township 22 South, Range 30 East, Orange County, Florida.

LESS AND EXCEPT: That portion known as La Costa Drive as set forth and described on the plat of Candlewyck East, as recorded in Plat Book 5, Page 12, Public Records of Orange County, Florida.

Exhibit "B"
City Property

Orange County Property Appraiser's Parcel Identification No. 34-22-30-0000-00-060

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 34, Township 22 South, Range 30 East,

Subject to Easement reserved unto the Grantor over the East 30 feet for drainage purposed and an easement over the South 70 feet therefor for public road purposes.

Exhibit "C"
Site Plan



Exhibit "D"
School Hours

Softball Field

School days, excluding CITY holidays.
Monday, Tuesday, Thursday – 9:00am – 3:15pm
Wednesday – 9:00am – 2:15pm

Outdoor Basketball Courts

School days, excluding CITY holidays.
Monday, Tuesday, Thursday, Friday – 9:00am – 3:15pm
Wednesday – 9:00am – 2:15pm

Outdoor Volleyball Courts

School days, excluding CITY holidays.
Monday, Tuesday, Thursday, Friday – 9:00am – 3:15pm
Wednesday – 9:00am – 2:15pm