

PREPARED BY:

Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
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PROPERTY EXCHANGE AGREEMENT

This Property Exchange Agreement entered into this ____ day of _____, 20__, by and between the **City of Orlando**, a municipality, duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, “City”, and **The School Board of Orange County, Florida** whose address is: 445 West Amelia Street, Orlando, FL, 32801, hereinafter referred to as “School Board”.

WITNESSETH:

WHEREAS, School Board is proposing to construct and operate a public school, “School,” located in the Parramore neighborhood west of downtown Orlando; and

WHEREAS, City owns certain unimproved property located along West Livingston Street and Otey Place in Orlando, Florida and consisting of approximately 3.63 acres, more particularly described in **Exhibit “A”** attached hereto and made a part hereof by reference, “City Property;” and

WHEREAS, School Board owns various properties throughout the City of Orlando, one of which may become available for use by the City for purposes of this Agreement, “School Board Property;” and

WHEREAS, School Board is proposing to build the School on the City Property and has requested that the City convey the City Property to School Board in exchange for the future conveyance of a School Board Property of generally equal value to the City in the alternative, payment of fair market value to the City for the City Property; and

WHEREAS, the City and School Board desire to memorialize their Agreement.

NOW, THEREFORE, in consideration of the mutual covenants described herein, the sufficiency of which is hereby acknowledged, the City and School Board agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Determination of Surplus Property/Payment of Fair Market Value. City and School Board shall cooperate in good faith to agree on a School Board Property at least ninety (90) days prior to the School Board Property Closing, as defined in Paragraph 4, below. The value of the School Board Property shall be generally equal to the fair market value of the City Property as of the Effective Date of this Agreement. If City and School Board cannot agree on a School Board Property on or before ninety (90) days from the School Board Property Closing, then School Board shall pay the City One Million Five Hundred Eighty Thousand Dollars (\$1,580,000.00), which the parties agree is the fair market value of the City Property as of the Effective Date of this Agreement based on an appraisal dated October 1, 2013 prepared by Pinel & Carpenter, Inc. If applicable, School Board's payment in full to the City shall occur on or before the date of the School Board Property Closing. As an administrative matter, the City shall then forward the funds to the City of Orlando Community Redevelopment Agency, "CRA."
3. Conveyance of Properties. Except as provided in Paragraph 2 hereof, the City agrees to convey the City Property to School Board by Special Warranty Deed. School Board acknowledges that City holds title to the City Property subject to a covenant prohibiting use of the property for anything other than a public school. Based on that covenant, the deed from the City to the School Board for the City Property shall contain the following deed restriction:

"The Property shall be, and is hereby, restricted to public school and school related uses, including recreational, athletic, parking and administrative activities, for a term of fifty (50) years from the date of the Grantor's execution of this deed. The Grantor shall be entitled to enforce the terms of this Restrictive Covenant, as provided by law. Notwithstanding the foregoing, at Grantor's sole discretion, the Property shall revert to Grantor under the following conditions: Grantor shall provide written notice of a violation of the Restrictive Covenant to Grantee or Grantee's successor(s) or assign(s). If the violation is not cured or remedied in full within thirty (30) days after

said notice, the Property shall immediately and without further action revert to Grantor and Grantor shall file a notice of reversion in the Public Records of Orange County, Florida.”

In the event the School Board is obligated to convey the City Property back to the City due to a violation of the above-referenced deed restriction, the City shall pay the School Board for the City Property One Million Five Hundred Eighty Thousand Dollars (\$1,580,000.00), which is the value of the property on the date of this Agreement.

Notwithstanding the foregoing, the parties hereby acknowledge that the School Board shall operate the proposed school as a community school (as further discussed in paragraph 18 hereinbelow), and such uses may include programs not consistent with traditional school operations, but that will benefit the surrounding community of the school, and that such uses shall not be considered a violation of the deed restrictions described in this paragraph and shall not cause the School Board to be obligated to convey the City Property to the City.

4. Closings. The City’s conveyance of the City Property to the School Board shall occur on or before **October 1, 2014**, (“City Property Closing,”) unless extended by mutual consent of the parties hereto. The School Board’s conveyance of the School Board Property to the City or the School Board’s payment of cash for the prior conveyance of the City Property to the School Board shall occur on or before **October 1, 2016**, “School Board Property Closing” unless extended by mutual consent of the parties. The City Property Closing and the School Board Property Closing are hereinafter collectively referred to as “Closings.” The Closings shall occur in the offices of Swann, Hadley, Stump, Dietrich & Spears.
5. As is Condition of Properties. The City Property will be conveyed in its “As Is” condition, without any warranty, express or implied, of merchantability or fitness for a particular purpose except as set forth in this Agreement. If the parties agree on a School Board Property, it will be conveyed in its “As Is” condition, without any warranty, express or implied, of merchantability or fitness for a particular purpose except as expressly set forth in this Agreement. Each party is relying solely upon its

own inspection and investigation and not upon any representation, warranty, statement, or study, report, description, guideline or other information materials made or furnished by the other party or any of its officers, employees, agents or representatives, whether written or oral, express or implied, of any nature whatsoever unless set forth expressly in this Agreement.

6. City Inspection. City shall inspect potential School Board properties as part of the process of determining a School Board Property, as provided in Paragraph 2, above. School Board hereby grants the City a license to engage in inspection activities including test wells, upon five (5) days prior written notice to the School Board. The City agrees to restore any School Board Properties it inspects to their condition existing prior to City's inspection activities and to immediately repair any damage caused to School Board property by the City's inspection activities. Any individuals conducting tests on School Board Property on behalf of the City shall comply with all necessary screenings required by the Jessica Lunsford Act.
7. School Board Inspection. School Board shall have sixty (60) days from the Effective Date, ("School Board Inspection Period") to inspect the City Property. The City hereby grants the School Board a license to engage in inspection activities during the Inspection Period, including test wells, upon five (5) days prior written notice. School Board agrees to restore the City Property to its condition existing prior to School Board's inspection activities and to immediately repair any damage caused to the City Property by School Board's inspection activities.
8. Termination. Either Party may terminate this Agreement for any reason, or no reason at all, prior to the City Property Closing by giving the other party written notice. If the notice of termination is based on a default under this Agreement, the defaulting party shall be given fifteen (15) days to cure said default before the termination becomes effective. Upon termination, the parties shall be relieved of any and all liability and responsibility under this Agreement. This Agreement may not be terminated by either party after the City Property Closing.
9. Default after City Property Closing. If at any time between the City Property Closing and the School Board Property Closing, the School Board is in default in a material respect in the performance of any of its obligations under this Agreement, and such

default is not cured within fifteen (15) days after written notice and demand from the City, the City shall have the right to file suit to specifically enforce this Agreement, to which remedy the School Board hereby consents and shall have the right to recover actual damages incurred as a result of such failure to perform, together with costs and reasonable attorney's fees incurred thereby. Notwithstanding the foregoing, this provision is not intended to be a waiver of the School Board's rights pursuant to §768.28, Florida Statutes.

10. Matters that Survive Closing. In the event that either of the parties fails to perform any covenant or breaches a representation or warranty that survives the Closings and fails to cure the matter within fifteen (15) days after notice thereof (or commence such cure and diligently pursue it, in the event it cannot be cured within 15 days), then the aggrieved Party shall have the right to recover actual damages incurred as a result of such failure to perform, together with costs and reasonable attorney's fees incurred thereby. Notwithstanding the foregoing, nothing in the provision is intended to be a waiver of the parties rights pursuant to §768.28, Florida Statutes.
11. Marketable Title. It is the intent of the parties that the properties exchanged under this Agreement shall be subject only to those covenants, conditions, restrictions, easements, liens and encumbrances acceptable to each grantee as such grantee deems acceptable in its sole and absolute discretion. School Board may, at School Board's cost, obtain a policy of title insurance for the City Property prior to the City Property Closing. School Board shall notify the City of defects in the title of the City Property at least thirty (30) days prior to the City Property Closing and City shall use reasonable efforts to cure said defects. If City does not cure said defects to the satisfaction of the School Board, then School Board may terminate this Agreement and neither party shall have any further liability hereunder. City may, at City's cost, obtain a policy of title insurance for the School Board Property prior to the School Board Property Closing. City shall notify School Board of defects in the title of the School Board Property at least thirty (30) days prior to the School Board Property Closing and School Board shall use reasonable efforts to cure said defects. If School Board cannot cure said defects to the satisfaction of the City, then City and School

Board shall determine a different property as School Board Property or School Board shall pay cash for the City Property as provided in Paragraph 2, above.

12. Survey. City is responsible for obtaining, at its cost, a survey of the School Board Property for use at School Board Property Closing. The survey shall be submitted to the School Board for review upon its completion and at least thirty (30) days prior to the School Board Property Closing. School Board is responsible for obtaining, at its cost, a survey of the City Property for use at City Property Closing. The survey shall be submitted to the City for review upon its completion and at least thirty (30) days prior to the City Property Closing. Each party shall notify the other at least thirty (30) days prior to the respective Closing of any title defects shown by a survey and the party so notified shall use reasonable efforts to cure the defect(s). With respect to the City Property, if said defects cannot be cured to the satisfaction of School Board, then School Board may terminate this Agreement and neither party shall have any further liability hereunder. With respect to the School Board Property, if School Board cannot cure said defects to the satisfaction of the City, then City and School Board shall determine a different property as School Board Property or School Board shall pay cash for the City Property as provided in Paragraph 2, above.
13. Exchange of Surveys and Reports. City shall, within thirty (30) days of the Effective Date of this Agreement, submit to the School Board, copies of all surveys, title opinions, geotechnical and environmental reports and any other reports or documents that relate to the condition or title of the City Property. As part of the process of determining as School Board Property under Paragraph 2, above, the School Board shall submit to the City, copies of all surveys, title opinions, geotechnical and environmental reports and any other reports or documents that relate to the condition or title of the potential School Board Property.
14. Lee Avenue Extension. In conjunction with construction of the School, the School Board shall be responsible for causing certain improvements be made to Lee Avenue, including the extension of Lee Avenue as further depicted in **Exhibit "B"** attached to and incorporated herein for the benefit of the School.
15. Otey Place and Federal Road. The parties hereto hereby acknowledge that in order for the School Board to utilize the City Property for its intended use, portions of Otey

Place and Federal Road will need to be vacated. Such vacations will be undertaken by the School Board using the customary process contained in the City Code.

16. Appearance Review. School Board shall submit all proposed design and site plans, including bus and vehicle circulation plans, “Plans,” for the School to the City for a courtesy review as soon as practicable after the Effective Date of this Agreement. City staff shall provide suggestions and/or recommendations to the School Board within thirty (30) days of receipt of the Plans. The School Board may, in its sole discretion, incorporate the City’s suggestions and/or recommendations into its Plans; provided, however, the School Board shall not be required to incur any cost or expense as a result of incorporating the City’s suggestions and/or recommendations into its plans. School Board and City acknowledge that the School is intended to be a primary element of the public realm within the neighborhood that the School serves. Therefore School Board agrees that to the greatest extent practicable and to the extent that it would not be contrary to the State Requirements for Educational Facilities (“SREF”) promulgated by the Florida Department of Education, design of the School shall meet the traditional City design standards with respect to building orientation, transparency, setbacks and public entry locations. Be that as it may, the City shall not bear any costs or expenses, which it does not specifically agree in writing to pay. Notwithstanding the foregoing, nothing contained herein shall be deemed a waiver by the School Board of any of its rights pursuant to applicable law as it pertains to the design, construction or operation of schools.
17. Site-Related Conditions. Within thirty (30) days of receipt of the Plans, City staff shall also provide suggestions and/or recommendations to the School Board regarding site-related conditions of development of the School. Comments may include, though not exclusively, fence and sidewalk design and location, as well as access management improvements. The School Board may, in its sole discretion, incorporate the City’s comments into its Plans; provided, however, the School Board shall not be required to incur any cost or expense as a result of incorporating the City’s comments into its plans. Notwithstanding the foregoing, nothing contained herein shall be deemed a waiver by the School Board of any of its rights pursuant to applicable law as it pertains to the design, construction or operation of schools.

18. Community School. School Board acknowledges that the School is intended to be designed, constructed and operated as a community school. A “community school” is one which contains features for community use, provides a range of supplemental and supportive services, is open beyond the traditional school day, and is integrated into the rebuilding of the surrounding neighborhood. Based on the foregoing, the design and operation of the School may include: (a) Student Wellness Center to address a full range of health, mental health and social services designed to promote children’s well-being and remove barriers to learning; (b) Family Resource Center to address student tutoring, extended learning and adult education. (c) Participation in a “Walkable School Bus” program to assure a safe walk to school for students in the Parramore Neighborhood; (d) the provision of linkages to bike and pedestrian pathways and transit (Lymmo and Lynx) that serve the Parramore Community; (e) Access to recreation facilities such as joint use with the neighborhood community organizations and existing neighborhood assets.
19. Rezoning/Plat. School Board shall be responsible for obtaining any land use approvals necessary for development of the School, including a rezoning of the City Property, as well as any other property necessary for construction of the School to “P,” Public Use. Due to the fact that streets will be vacated as well as created and that existing utilities must be identified and possibly relocated, all as part of the School construction, School Board shall plat the property necessary for construction and operation of the School.
20. School Board represents the following with respect to the School Board Property:
- (a) To the best of the School Board’s knowledge, there are no pending actions or claims against School Board or the School Board Property under any environmental law, regulation or ordinance; and School Board has not received notice in any form of such an action or claim or possible action or claim.
 - (b) To the best of the School Board’s knowledge and belief there are no contaminants, pollutants, man-made substances, or toxic or hazardous substances on or in the School Board Property or on any adjacent property.
 - (c) The School Board Property is not now and to the best of School Board’s knowledge, never has been used to generate, manufacture, refine, transport, treat,

store, handle, dispose, transfer or process or in any manner deal with hazardous materials.

(d) The foregoing representations and warranties are true and correct as of the date hereof and shall be true and correct as of the date of closing and such representations and warranties shall survive closing.

21. City represents the following with respect to the City Property:

(a) To the best of the City's knowledge, there are no pending actions or claims against City or the City Property under any environmental law, regulation or ordinance; and City has not received notice in any form of such an action or claim or possible action or claim.

(b) To the best of the City's knowledge and belief there are no contaminants, pollutants, man-made substances, or toxic or hazardous substances on or in the City Property or on any adjacent property.

(c) The City Property is not now and to the best of City's knowledge, never has been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer or process or in any manner deal with hazardous materials.

(d) The foregoing representations and warranties are true and correct as of the date hereof and shall be true and correct as of the date of closing and such representations and warranties shall survive closing.

22. Taxes and Assessments. The Parties shall pay all ad valorem taxes, prorated ad valorem taxes, and tangible personal property taxes applicable, accruing on their respective properties, if any, before the date of closing, as well as any and all assessments levied against said properties by an authorized entity.

23. Vacate and Remove Personal Property. The Parties shall vacate their respective properties and remove and dispose of any and all personal property there from by or before the Closings. After the Closings, the respective Grantee shall assume the responsibility for removal and disposal of any and all personal property located on the property and shall not be liable for any damages resulting from said removal and disposal.

24. Responsibility Prior to Closings. Each Party shall bear sole responsibility and liability for their respective property until Closings occur and title transfers thereby.
25. Closing Costs. As both City and School Board are governmental entities, the exchange of properties under this Agreement is exempt from documentary stamp taxes. The remaining Closing Costs shall be paid by each party consistent with standard practice.
26. Entire Agreement. No statements, representations, warranties, either written or oral from whatsoever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties with the same formalities as this Agreement is executed.
27. Assignment. Neither party may assign this Agreement without the consent of the other, which may be withheld in the sole and absolute discretion of the party whose consent is necessary. Any assignment shall not terminate the liability of the assignor to perform, unless a written release is given by the non-assigning party to this Agreement.
28. Assigns. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.
29. Notices and Deliveries. Any notices or other communications or deliveries which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or if sent by telecopy facsimile to the numbers set forth below, or if sent by overnight courier (e.g., Federal Express), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

If to the City:

City of Orlando
Attention: Real Estate Manager
400 S. Orange Avenue
Orlando, FL 32802

With copy to:

City of Orlando
Attention: City Attorney
400 South Orange Avenue
Orlando, FL 32802

If to the School Board:

The School Board of Orange County, Florida,
445 West Amelia Street
Orlando, FL 32801
Attention: Superintendent

With copy to:

Orange County Public Schools
Attention: Director of Real Estate Management
6501 Magic Way, Bldg. 200
Orlando, FL 32809

and

Orange County Public Schools
Attention: General Counsel
445 West Amelia Street
Orlando, FL 32801

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the second business day following the day such notice is deposited in the United States mail in the manner specified above. Any notice delivered by overnight courier shall be deemed to have been duly given, delivered or made on the first business day following the day such notice is delivered to the overnight courier as established by the receipted bill of lading. Any notice which is given, delivered or made by personal delivery or telecopy shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying said change of address.

30. Regulatory Authority. Nothing in this Agreement modifies or changes the regulatory authority of the City with respect to the City Property.
31. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.
32. Effective Date. This Agreement shall become effective on the date of full and complete execution by both parties hereto.

ATTEST:

CITY OF ORLANDO, FLORIDA,
a municipal corporation

By: _____
Alana Brenner, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2014 by _____ Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Approved as to form and legality for the use
and reliance of the City of Orlando,
_____, 2014

By: _____
Chief Assistant City Attorney

Signed, sealed and delivered in the presence of:
Two Witnesses:

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a corporate body organized and existing under the constitution and laws of the State of Florida
{Corporate Seal}

Sign: _____
Print Name: _____

By: _____
Name: William E. Sublette
Title: Chairman

Sign: _____
Print Name: _____

Date: _____, 2014

Attest _____
Barbara M. Jenkins, as its Secretary and Superintendent

Approved as to form and legality by the Office of the General Counsel for The School Board of Orange County, Florida this ____ day of _____, 2014

Eileen D. Fernandez
Associate General Counsel

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by William E. Sublette, as the Chairman of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida on behalf of the School Board. Said person (check one) ____ is personally known to me or ____ produced _____ as identification.

Printed Name: _____
Notary Public, State of Florida
Commission No. _____
My commission expires: _____

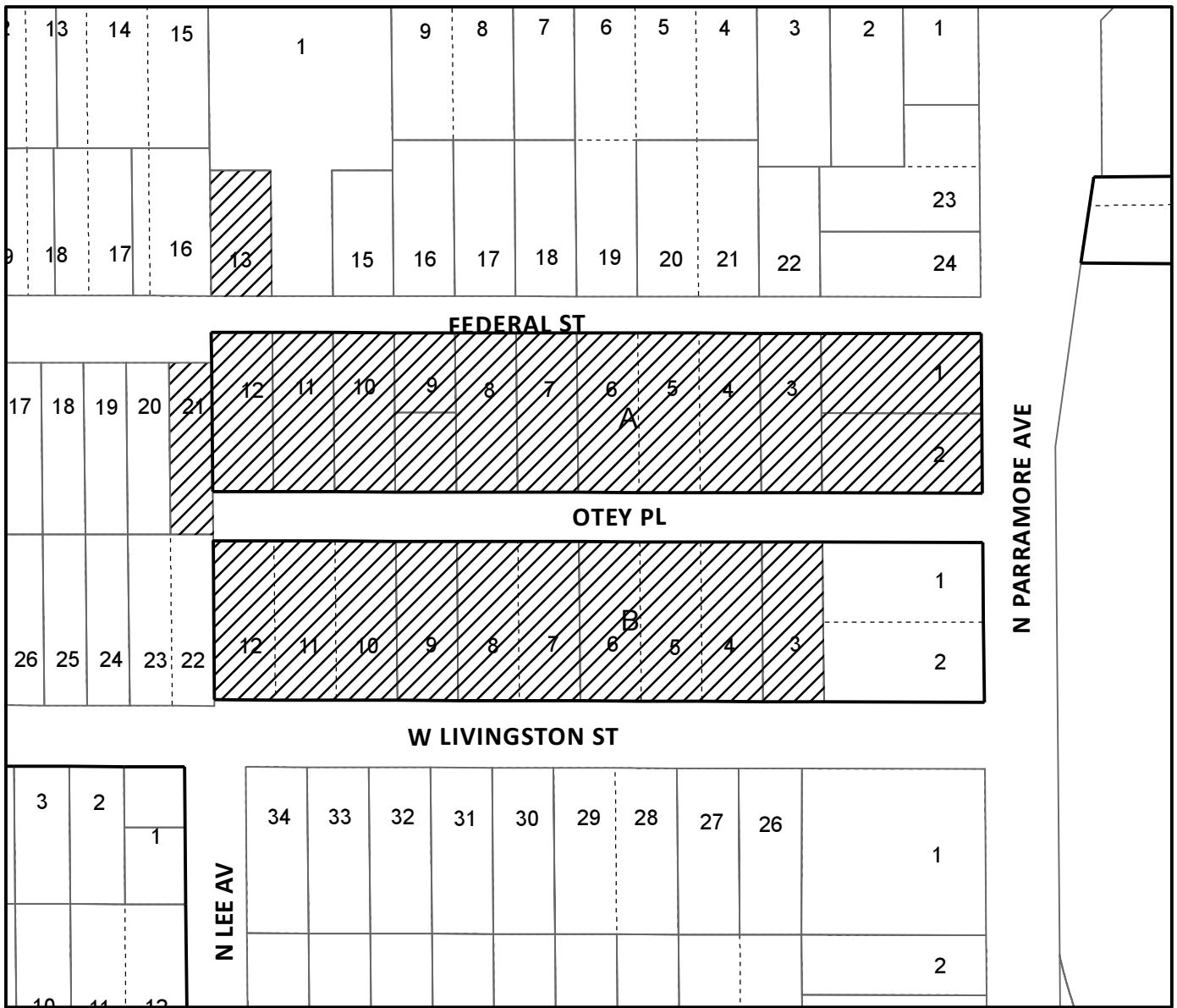
SCHOOL BOARD SIGNATURES CONTINUE NEXT PAGE

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Barbara M. Jenkins, as Secretary and Superintendent of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida on behalf of the School Board. Said person (check one) ____ is personally known to me or ____ produced _____ as identification.

Printed Name: _____
Notary Public, State of Florida
Commission No. _____
My commission expires: _____

EXHIBIT "A"



Lots 1 through 12, Block A, and Lots 3 through 12, Block B, Federal Park, as recorded in Plat Book H, Page 30, Public Records of Orange County, Florida and Lot 21 of Sunnyside Addition, as recorded in Plat Book F, Page 97, Public Records of Orange County, Florida

LEGEND

0 100 200

 Feet

City of Orlando Property
to be transfered to
Orange County Public School

City of Orlando, July, 2014

EXHIBIT "B"



The precise alignment, dimensions and extent of the N Lee Ave extension shall be determined as part of the development plan for the School