

**FIRST AMENDMENT TO TRI-PARTY SCHOOL SITE SALE/DONATION, DEVELOPMENT  
AND OPERATING AGREEMENT**

**THIS FIRST AMENDMENT TO TRI-PARTY SCHOOL SITE SALE/DONATION, DEVELOPMENT AND OPERATING AGREEMENT** (“Amendment”) is made and entered into as of the Effective Date (hereinafter defined), by and between **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a public corporate body existing under the laws and constitution of the State of Florida with its principal offices at 445 West Amelia Street, Orlando, Florida 32801 (“School Board”), **CITY OF ORLANDO, FLORIDA**, a municipal corporation, with its principal offices at 400 S. Orange Avenue, Orlando, Florida 32806 (“City”), and **ORLANDO NTC PARTNERS**, a Joint Venture, with offices at 1099 Bennett Road, Orlando, Florida 32803 (“Partners”).

**WITNESSETH:**

**WHEREAS**, School Board, City and Partners entered into that certain Tri-Party School Site Sale/Donation, Development and Operating Agreement dated effective July 19, 2001 (“Agreement”) governing the operation and management of the School Related Park Improvements, as defined in the Agreement, adjacent to Glenridge Middle School;

**WHEREAS**, the Agreement obligated the City to construct and maintain the School Related Park Improvements, including, without limitation, the multi-purpose field and track;

**WHEREAS**, the School Related Park Improvements are in need of certain repairs and capital improvements, including, without limitation, restriping the track, resodding the multi-purpose field and installing fencing around the School Related Park Improvements, all as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference (collectively, the “Remedial Repairs”);

**WHEREAS**, pursuant to Sections 5.1 and 5.2 of the Agreement, the School Board was obligated to pay the City a capital contribution in the amount of Eight and No/100 Dollars per linear foot for fencing improvements (“Fencing Payment”) and certain maintenance payments in quarterly installments since the completion of the construction and installation of the School Related Park Improvements in exchange for the City’s construction of and the School Board’s use of the School Related Park Improvements (“Maintenance Payment”); and

**WHEREAS**, the Parties hereto desire to clarify, amend and restate certain provisions of the Agreement related to the City’s obligation with regard to the repair and maintenance of the School Related Park Improvements and the School Board’s obligation to contribute toward the costs and expenses incurred by the City for the maintenance of the School Related Park Improvements and future capital improvements, in accordance with the terms and conditions more particularly set forth herein.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct in all material respects and incorporated herein by reference.
2. **Definitions.**

a. "On-going minor repairs and maintenance" includes but is not limited to mowing, fertilizing, and application of pest control treatments, minor fence repairs and replacement of basketball and tennis nets.

b. "Major capital repairs and renovations" includes but is not limited to resurfacing and re-stripping of the entire track, resurfacing of one or more entire tennis/basketball courts, and major overhauls of field turf and fencing.

3. **Capitalized Terms.** Each capitalized term used in this Amendment and not defined herein shall have the same meaning ascribed to it in the Agreement.

4. **Payment Obligations and Release.** In exchange for the City executing the Release of All Claims and Indemnity Agreement in substantially the form attached hereto and incorporated herein by referenced as **Exhibit "B"** ("Release"), School Board agrees to pay to the City, and the City agrees to accept in full satisfaction of any potential Maintenance Payment and Fencing Payment due the City from the School Board from August 1, 2003 to the Effective Date hereof, the sum equal to Seventy-Four Thousand Eight Hundred Twenty-One and No/100 Dollars (\$74,821.00)("Settlement Payment").

5. **Remedial Repairs.** City shall take any and all action reasonably necessary to commence the Remedial Repairs within ten (10) business days of the Effective Date hereof ("Commencement Date") and shall diligently pursue the completion of the Remedial Repairs, including, without limitation, the expiration of any applicable grow period, no later than 15 weeks from the Effective Date hereof ("Completion Date"). City and School Board agree and acknowledge that the City's timely commencement and completion of the Remedial Repairs is a material inducement to the School Board entering into this Amendment and agreement to pay the Settlement Payment and failure to do so will result in School Board being damaged thereby, including, without limitation, the School Board incurring substantial transportation or rental fees associated with utilizing alternative recreational facilities. Because the amount of said damage is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that for such period of time after the Completion Date that the Remedial Repairs are not completed, the amount of such damages shall be equal to One Hundred and No/100 Dollars (\$100.00) per day for the first thirty (30) days until such time as the Remedial Repairs are completed; City further agrees that said sum is not a penalty but reasonable compensation for the damages incurred by School Board. City shall pay such liquidated damages within thirty (30) days after written demand by School Board and any amounts due hereunder which are not due when paid shall accrue interest at the maximum allowable rate by law until repaid in full.

6. **Funding of Maintenance of School Related Park Improvements.** Section 5.2.2 of the Agreement is hereby amended and restated in its entirety as follows:

Commencing on January 1, 2016 for the School Board fiscal year 2015-2016 and annually thereafter, School Board shall make a contribution to the City toward the cost of "on-going minor repairs and maintenance" of the School Related Park Improvements, in an amount equal to Two Thousand Five Hundred Fifty and No/100 Dollars (\$2,550.00) per year. This amount is calculated based upon the current rate of \$75 per maintenance cycle times 34 maintenance cycles per year. The City shall provide a minimum of 34 cycles per year, but may increase the number of cycles at no cost to School Board. The amount of the School Board's contribution will be reviewed every three years and recalculated based upon the per cycle cost, for no more than 34 cycles per year.

Responsibility for covering the cost of future "major capital repairs and renovations" at the School Related Park Improvements, including but not limited to

resurfacing and re-striping of the entire track, resurfacing of one or more entire tennis/basketball courts, and major overhauls of field turf and fencing, will be decided and negotiated on a case-by-case basis.

7. **Use of School Related Park Improvements.** Section 5.3 of the Agreement is hereby amended and restated in its entirety as follows:

In consideration for the agreement by the School Board to provide the funding set forth above, and provided that the School Board constructs the Middle School, the City agrees that students and faculty attending the Middle School shall have the exclusive right to utilize the School Related Park Improvements during all days when such school is in session, during all regular school hours, and, with prior written notice to the City, before and after regular school hours, whenever the School Board schedules pre-school or post-school extracurricular and athletic activities utilizing the School Related Park Improvements. The School Board agrees to provide reasonable notice to the City from time to time of the hours and days during which the Middle School will be in session and the hours and days on which pre-school and post-school activities will occur that will entitle the School Board to exclusive use of the School Related Park Improvements. The City agrees to post signage in the vicinity of the School Related Park Improvements to inform the general public that the School Related Park Improvements are for the exclusive use of the Middle School during school hours and to accommodate pre and postschool activities. City shall take any and all actions reasonably necessary to restrict and regulate the use of the School Related Park Improvements to ensure the School Related Park Improvements are in suitable condition for use by the School Board for the aforementioned activities, including, without limitation, locking the gates and fencing installed around the School Related Park Improvements as a part of the Remedial Repairs on a nightly basis, posting appropriate signage on the School Related Park Improvements restricting the hours of use, limiting the use of the School Related Park Improvements by third party organizations on a fee basis, and otherwise imposing or enforcing any other restrictions reasonably required to ensure the School Related Park Improvements experience adequate and sufficient rest periods (collectively, "Use Restrictions").

8. **Maintenance of the School Related Park Improvements.** Section 5.5 is hereby added to the Agreement in its entirety as follows:

5.5. **Maintenance of the School Related Park Improvements.**

5.5.1. **Maintenance of School Related Park Improvements.** City, subject to the reimbursement provisions set forth in Paragraph 6 herein, shall be responsible for the custodial, maintenance, repair and replacement of the Park and all School Related Park Improvements located thereon. All maintenance, repair and replacement shall be conducted by City with first class materials, in a good and workmanlike manner, of the same or similar quality, quantity, and consistent with the maintenance standards and procedures of the School Board related to recreational amenities for educational facilities, including, without limitation, mowing no less than 34 times per year, applying all pesticide and herbicide treatments on an annual basis and providing all on going minor repairs and maintenance on an as-needed basis or otherwise required for the School Board's continuous and uninterrupted use of the School Related Park Improvements (collectively, "School Maintenance Standards"). In the event the City elects to provide repair, replacement or maintenance beyond the School Maintenance

Standards or if the School Related Park Improvements require additional maintenance due to failure to comply with or enforce the Use Restrictions, the City shall bear all costs associated with such repairs, replacement and maintenance.

5.5.2 School Board Maintenance Request. In the event City fails to maintain, repair or replace the School Related Park Improvements, School Board shall promptly provide written notice to the School Board ("Maintenance Request") outlining any deficiency, defective or damaged condition, area in disrepair or in need of maintenance in or about the Unified Systems (collectively, "Maintenance Issue") in or about the School Related Park Improvements. 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, City, at its sole cost and expense, shall repair, replace or maintain that certain portion of the School Related Park Improvements and the Maintenance Issue more specifically identified and outlined in the Maintenance Request. 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 ability to effectively utilize the School Related Park Improvements, or any portion thereof, for any use of the School Related Park Improvements as outlined in Section 5.3 hereof, the School Board, 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," City shall reimburse the School Board for its reasonable costs of curing the Maintenance Issue ("Maintenance Cure Costs") within thirty (30) calendar days following delivery to School Board 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 School Board to do so; (ii) render the School Board liable to City or any third party for an election not to do so; (iii) relieve City from any performance obligation hereunder; or (iv) relieve City from any indemnity obligation as provided in this Agreement.

9. Ratification of Agreement. Each of the parties hereto ratifies the Agreement and except as modified by this Amendment, all other terms and conditions of the Amendment shall remain in full force and effect.

10. Execution of Counterparts. This Amendment may be executed in one or more duplicate originals or counterparts delivered electronically, by facsimile, or otherwise, each such duplicate or counterpart shall be deemed to be an original for all purposes, and all of which together shall constitute one and the same instrument.

11. Binding Effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. Effective Date. The effective date of this Amendment shall be the date upon which the last of the parties hereto executes this Amendment ("Effective Date").

*Signatures on Following Page*

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed as of the Effective Date.

**WITNESSES:**

**CITY OF ORLANDO, FLORIDA**, a  
municipal corporation existing under the  
laws of the State of Florida

\_\_\_\_\_  
Print Name:\_\_\_\_\_

By:\_\_\_\_\_  
Buddy Dyer, Mayor

\_\_\_\_\_  
Print Name:\_\_\_\_\_

Dated:\_\_\_\_\_, 2015.

\_\_\_\_\_  
Print Name:\_\_\_\_\_

Attest:\_\_\_\_\_

Print Name:\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Print Name:\_\_\_\_\_

Approved as to form and legality for the use and  
reliance of the City of Orlando, Florida, only.

\_\_\_\_\_  
Name:\_\_\_\_\_  
City Attorney

Dated:\_\_\_\_\_, 2015.

**THE SCHOOL BOARD OF ORANGE  
COUNTY, FLORIDA**, a public corporate  
body organized and existing under the  
Constitution and the laws of the State of  
Florida.

**WITNESSES:**

\_\_\_\_\_  
Print Name:\_\_\_\_\_

\_\_\_\_\_  
Print Name:\_\_\_\_\_

By:\_\_\_\_\_

William E. Sublette

Title: Chairman

Dated:\_\_\_\_\_

STATE OF FLORIDA )

) s.s.:

COUNTY OF ORANGE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by William E. Sublette, as Chairman of The School Board of Orange County, Florida, a public corporate body organized and existing under the Constitution and the laws of the State of Florida, on behalf of The School Board. He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

Print Name:\_\_\_\_\_

Commission No:\_\_\_\_\_

My Commission Expires:\_\_\_\_\_

**WITNESSES:**

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Barbara M. Jenkins, as its  
Secretary and Superintendent

Dated: \_\_\_\_\_

STATE OF FLORIDA )

) s.s.:

COUNTY OF ORANGE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Barbara M. Jenkins as Superintendent and Secretary of The School Board of Orange County, Florida, a public corporate body organized and existing under the Constitution and the laws 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.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Commission No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Reviewed and approved by Orange County  
Public School's Chief Facilities Officer

Approved as to form and legality by legal counsel  
to The School Board of Orange County, Florida,  
exclusively for its use and reliance.

\_\_\_\_\_  
John T. Morris  
Chief Facilities Officer

\_\_\_\_\_  
Laura L. Kelly, Esquire

Dated: \_\_\_\_\_, 2015

Dated: \_\_\_\_\_, 2015



**WITNESSES:**

**ORLANDO NTC PARTNERS**

a Joint Venture

By: Orlando Naval Investors, L.P.  
A Delaware Limited Partnership,  
Its Managing Venturer

By: Orlando Naval GP Corp.,  
A Delaware Corporation,  
Its General Partner

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) SS  
COUNTY OF ORANGE                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by \_\_\_\_\_, as the \_\_\_\_\_ of Orlando Naval GP Corp., the General Partner of Orlando Naval Investors, L.P. the Managing Venturer of ORLANDO NTC PARTNERS, a joint venture, who is personally known to me and who did not take an oath.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Commission No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_