

LEASE AGREEMENT
BETWEEN
THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA
AND
THE CITY OF ST. PETERSBURG, FLORIDA
L-9428

This Lease Agreement ("**Lease**") is made effective this 15th day of November, 2018, ("**Effective Date**") between THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA, a political subdivision of the State of Florida ("**Lessor**"), with its administrative offices located at 301 4th Street S.W., P.O. Box 2942, Largo, FL 33779-2942, and THE CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation of the State of Florida, ("**Lessee**"), P.O. Box 2842, St. Petersburg, FL 33731-2842, (collectively "**Parties**").

WITNESSETH:

WHEREAS, the Lessor owns real property adjacent to Lynch Elementary School ("**School**") in the City of St. Petersburg; and

WHEREAS, the Lessee desires to fund the construction of, and operate, a community garden upon a portion of said property; and

WHEREAS, the Lessor desires to allow the Lessee to construct and operate a community garden upon a portion of said property.

NOW THEREFORE, in consideration of the covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy which are hereby acknowledged, the Parties hereto agree as follows:

1. **DESCRIPTION OF LEASED PROPERTY, PREMISES, AND PLANNED IMPROVEMENTS.** Subject to the provisions, covenants and agreements of this Lease, Lessor agrees to lease and Lessee leases and accepts from Lessor, a portion of that certain property located at 7390 18th Street North, St. Petersburg, Florida, adjacent to Lynch Elementary School ("**Premises**") as illustrated in the attached Exhibit "A", attached hereto and incorporated herein by reference. The Premises is divided into three areas, as illustrated in Exhibit "A":

1.1 **Primary Use Area.** In the portion of the Premises depicted in Exhibit "A" as Primary Use Area the Lessee shall have the primary use of the Premises ("**Primary Use Area**"). The Lessee may make improvements to the Primary Use Area at Lessee's sole expense, including, but not necessarily limited to, conversion of the site into a community garden, converting the restroom facility and bleachers to alternative uses, and construction of such improvements as the Lessee may determine appropriate for community garden use. The Lessee shall install a fence with gates around the Primary Use Area and between the Joint Use Classroom, as defined following, and the remainder

of the Primary Use Area, as depicted in Exhibit "A", ("**Fence**") to provide a separation from Lessee's and Lessor's activities, with keys provided to Lessor. Lessee is solely responsible for the cost and maintenance of the Fence. The Lessee shall mow the Premises in a manner that is consistent with the School's maintenance schedule. Lessee shall obtain prior written approval from Lessor's Superintendent or designee of all improvement plans prior to any improvement of the Premises, which approval shall not be unreasonably withheld.

1.2 Non-Primary Use Area. In the portion of the Premises depicted in Exhibit "A" as Non-Primary Use Area the Lessee shall have the non-primary use of the Premises to maintain a parking lot ("**Non-Primary Use Area**"). The Lessee may make improvements to the Non-Primary Use Area at Lessee's sole expense as required to provide parking for the community garden, and may install and maintain landscaping improvements north of the parking spaces along 74th Avenue North at the Lessee's sole expense and discretion. Lessee shall obtain prior written approval from Lessor's Superintendent or designee of all improvement plans prior to any improvement of the Premises, which approval shall not be unreasonably withheld.

1.3 Joint Use Classroom. If Lessor and Lessee mutually agree on an acceptable design for an outdoor classroom facility ("**Joint Use Classroom**"), then Lessee shall install, at Lessee's sole expense, the Joint Use Classroom in the portion of the Premises depicted in Exhibit "A" as Joint Use Classroom (collectively with the improvements in Section 3.1 and Section 3.2 "**Improvements**").

2. TERM; COMMENCEMENT; EXPIRATION. The term of the Lease ("**Term**") shall be for thirty (30) years commencing on the 1st day of November, 2018 ("**Commencement Date**") and ending on the 31st day of October 2048 ("**Expiration Date**"). If Lessee holds over after the expiration of the Lease Term without objection from Lessor, then Lessee's tenancy shall be from month to month on all the terms and conditions of this Lease.

3. USE OF PREMISES. The Lessee shall use the Premises for creation of a community garden, a joint use classroom space and parking to serve the community garden. The Lessee shall not conduct any activities on the Premises that are not directly connected to the foregoing use, it being expressly understood and agreed that the sole motivation for the Lessor to lease the Premises is to further the development of a community garden. Lessee shall have use of the Premises Monday through Friday, thirty (30) minutes following the afternoon dismissal (which is currently 2:45 p.m). until 11:00 p.m.; and from 8:00 a.m. until 11:00 p.m. on Saturdays, Sundays and non-school days, as defined following. Hours of use may be extended with written approval of the City Administrator and Superintendent of Schools, or their designees. Lessee shall be required to install and mount signage, at its sole expense, on the entrance of the Premises. The purpose of the signage will be to state the hours of the Premises; Lessee will be responsible to communicate with the Principal before the start of the school year to ensure the correct hours are posted every year.

3.1 Joint Use Classroom. Both Lessor and Lessee shall have the non-exclusive use of the Joint Use Classroom, as defined following. Lessor agrees to make the Joint Use Classroom available to the Lessee Monday through Friday, after 5:00 p.m. until 11:00 p.m.; and from 8:00 a.m. until 11:00 p.m. on Saturdays, Sundays and non-school days, as defined following. Hours of use may be extended with written approval of the City Administrator and Superintendent of Schools, or their designees. Lessor agrees to make the Joint Use Classroom available to the Lessee for use by the Lessee and Lessee Authorized Organizations, as defined following, during the term of this Lease or any extension or renewals thereof on other non-school days or shortened school days. The Lessor will occasionally have need of the Joint Use Classroom or a portion of the Joint Use Classroom on evenings and weekends, in which case, the Lessor use will have priority, however School Principal, or designee, must provide a minimum of 7-days' written notice and schedule the dates in question to the Lessee. Nothing herein shall be construed to require the Lessor to use the Joint Use Classroom during each day or the entire hours the Joint Use Classroom is available to the Lessor pursuant to this paragraph.

3.1.1 For purposes of this Lease, "Non-school day" will mean any day when students are not scheduled to or do not attend classes.

3.2 Lessee Authorized Organization. For purposes of this Lease, "Lessee Authorized Organization" will mean a program organized, sponsored, and conducted by an organization that has received permission from the Lessee to use the Joint Use Classroom as a Lessee-Authorized Organization.

3.2.1 The Lessor is not assuming any liability related to the programs of any Lessee Authorized Organization.

3.2.2 Use of the Joint Use Classroom by private parties or organizations or by business enterprises for profit, other than a Lessee Authorized Organization, is only permitted with the written consent of the Lessor's Superintendent of Schools and the Lessee, or their designees. The Lessor and the Lessee will equally share any revenue derived from any for-profit use of the Joint Use Classroom.

3.3 The Lessee and the Lessor further agree to make no unlawful, improper, or offensive use of the facilities. The Lessee, the Lessor and all their invitees will abide by all Lessor policies, including any policies, which prohibit the consumption of tobacco products or alcoholic beverages on Lessor's property, including outside areas.

3.3.1 If, at any time, the School Principal, or designee, reasonably determines the use of the Joint Use Classroom, or surrounding areas, by the Lessee or a Lessee-Authorized Organization will cause disruption of, or interference with, the educational process at the School or use of the School by the Lessor, or will cause a potential threat to the safety of the participants/spectators or the potential

for damage to the School, facility or grounds because of continued use, the specific use that causes the threat may be terminated immediately without notice.

3.3.2 The parties agree that the previous stated termination is only included to define the rights of School staff within this Lease and in no way abridges the obligation of the Lessee to properly supervise its activities.

3.4 Supervision of Programs. Lessee shall provide its own personnel for the supervision of the programs the Lessee conducts on the Premises.

4. EARLY TERMINATION.

4.1 Lessor. In the event the Lessor elects to terminate this Lease not less than ten (10) years following the Commencement Date ("Minimum Term"), the Lessor shall deliver to the Lessee a written notice to terminate and provide the Lessee not less than six (6) months to vacate ("Notice to Terminate") after the Minimum Term.

4.2 Lessee. Lessee may unilaterally terminate this Lease upon providing written notice to Lessor.

5. EXPIRATION OF TERM. Upon the expiration date of this Lease, whether by early termination of the Lease under paragraph 4, the expiration of the initial term or monthly term under a holdover period, or termination by Lessor due to Lessee's default hereunder, (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Premises and deliver to Lessor actual possession of the Premises in good order, condition, and repair.

6. LESSEE'S REMOVAL OF MOVABLE OBJECTS. Lessee shall have the right to remove from the Premises all movable trade fixtures, movable equipment, and articles of personal property used or procured for use in connection with the operation of the Premises on or before the Expiration Date, provided that Lessee shall promptly repair, or cause to be repaired, any damage resulting to the Premises by reason of this removal. In the event the Improvements are to be removed, Lessee is responsible for all costs associated with the removal of the Improvements.

7. LESSOR'S ENTRY AFTER TERMINATION OF LESSEE'S POSSESSION. At any time after the termination of Lessee's right of possession under this Lease, Lessor may enter and possess the Premises by summary proceedings, ejectment, or otherwise, and Lessor may remove Lessee and all other persons and property from the Premises. Any personal property or trade fixtures or equipment of Lessee that remains on the Premises after the Expiration Date shall be deemed abandoned by Lessee, and may either be retained by Lessor as its property or disposed of by Lessor without accountability to Lessee for the value. If such abandoned equipment, fixtures, improvements, or other property is disposed of by Lessor, Lessee shall pay the reasonable cost of such removal upon Lessor's presentment of such costs.

8. **LIENS AND ENCUMBRANCES.** Lessee shall not create, permit, or suffer any mechanics' or other liens or encumbrances on or affecting the Premises or the fee estate of Lessor. If any lien or encumbrance shall at any time be filed or imposed against the Premises, Lessee shall promptly cause the lien or encumbrance to be discharged of record. If Lessee shall fail to cause the lien or encumbrance to be so discharged, then in addition to any other right or remedy of Lessor, Lessor shall be entitled but not obligated to discharge the lien or encumbrance and seek reimbursement from Lessee.

9. **LESSOR NOT LIABLE FOR LABOR, SERVICES, OR MATERIALS FURNISHED TO LESSEE.** Lessor shall not be liable for any labor, services, or materials furnished or to be furnished to Lessee in connection with any work performed on or at the Premises, and no mechanics' lien or other lien or encumbrance for any labor, services, or materials shall attach to or affect Lessor's fee estate in the Premises.

10. **MAINTENANCE, REPAIRS, UTILITIES AND OTHER SERVICES.** Lessee shall be responsible for all repairs and maintenance, including grounds maintenance, landscaping and pest control. Lessee shall be responsible for the cost and expense of all utility services supplied to the Premises, to include electric, water, sewer, and garbage.

11. **INSURANCE.**

11.1 The Lessee is a fully qualified liability self-insurer under Section 768.28 Florida Statutes to the extent and limits provided by the statute. The statutory limits are presently \$200,000 per any one person and \$300,000 per aggregate for any one incident. This self insurance will cover the actions of the Lessee's officers, agents, employees, invitees, users, and volunteers while acting in the scope and course of their employment for the Lessee.

11.2 The Lessee is a fully qualified self-insurer under Section 440 Florida Statutes for Workers' Compensation. This self insurance will cover the actions of the Lessee's officers, agents, employees and volunteers while acting in the scope and course of their employment for the Lessee.

12. **LIABILITY.** The Parties shall be liable for their own acts of negligence, or their respective agents' acts of negligence when acting within the scope of their employment, in the performance of this Lease; provided, however, that the Parties' liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything herein be construed as consent by the Parties to be used by any third party for any cause or matter arising out of or related to this Lease.

13. **EVENTS AND NOTICE OF DEFAULT.** Lessee's failure to observe or perform or cause to be observed or performed any material term, covenant, or agreement under this Lease and continuation of this failure for a period of thirty days after Lessor's written notice to Lessee specifying the nature of Lessee's failure shall constitute a default under this Lease. However, a

failure to cure a default which cannot with reasonable diligence be cured by Lessee within a period of thirty days, is not a default so long as the Lessee proceeds to cure the failure with reasonable diligence and in good faith.

14. **LAWS AND ORDINANCES.** Lessee shall promptly comply with all laws and ordinances, and all orders, rules, regulations, and requirements of federal, state, and municipal governments and appropriate departments, commissions, boards, and officers of these governments throughout the Term of this Lease, and without cost to Lessor.

15. **WAIVER OF ANY PROVISION MUST BE WRITTEN.** No provision of this Lease shall be deemed to have been waived, unless the waiver is in writing and signed by the party against whom enforcement is sought. Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, or now or later existing at law, in equity, by statute, or otherwise. The failure of Lessor to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition.

16. **PARTIAL INVALIDITY OR UNENFORCEABILITY.** If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

17. **ASSIGNMENT AND SUBLETTING.** This Lease and the Term and estate granted by this Lease, or any part thereof, may not be subleased or assigned. The Parties expressly recognize that the nominal consideration charged hereunder is based on the unique circumstances of the Parties hereto and agree that any assignment or sublet by Lessee is unreasonable. The Parties agree that the Lessee may engage a non-profit entity to manage the Premises on behalf of the Lessee and that any such management agreement will not be a cause for default, subject to Lessor's approval of said non-profit entity, such approval not to be unreasonably withheld.

18. **QUIET ENJOYMENT.** Lessor covenants and agrees that Lessee, upon the fulfillment of the obligations under the covenants, agreements, and conditions of this Lease, shall lawfully and quietly hold, occupy, and enjoy the Premises during the term of this Lease without any interference from anyone claiming through or under Lessor.

19. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between Lessor and Lessee, and any agreement made after the execution of this Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the party against whom enforcement is sought.

20. **VENUE AND GOVERNING LAW.** This Lease shall be governed by and be interpreted in accordance with the laws of the State of Florida. Venue for any action brought in state court

shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division is created in St. Petersburg, or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.

21. **APPROVALS.** This Lease is subject to approval by the Mayor or his Designee, (or Mayor and City Council), as the City policies and procedures require, and the approval of the Lessor.

22. **AS-IS CONDITION.** Lessee accepts the condition of the Premises in "AS IS" condition. The Lessor has made no representations, statements, or warranties either expressed or implied as to the condition of the Premises.

23. **RECORDING.** Lessee, at its sole cost and expense, may record this Lease in the Public Records of Pinellas County, Florida.

24. **DUE AUTHORITY.** Each party to this Lease that is not a natural person represents and warrants to the other party(ies) that (i) it is a duly organized, qualified and existing entity under the laws of the State of Florida, and (ii) an appropriate authority exists so as to duly authorize the person(s) executing this Lease to so execute the same and fully bind the party on whose behalf they are executing.

25. **NON-APPROPRIATION.** The obligations of the Lessee as to any funding required pursuant to this Lease, shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential Lessee services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the Lessee shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the Lessee pursuant to this Lease.

26. **FACSIMILE; EMAIL; ELECTRONIC.** A facsimile (fax) or electronic copy (e-mail or pdf) of this Lease and any signatures thereon shall be considered for all purposes as originals.

27. **NOTICES.** Any notice, demand, request or other instrument which may be or is required to be given or delivered under this Lease shall be in writing and shall be deemed to be delivered (i) whether or not actually received, five (5) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (ii) when received (or when receipt is refused) if delivered personally or sent by a nationally-recognized overnight courier, all charges prepaid, at the addresses of the Lessor and Lessee as set forth in this paragraph. Such address may be changed by written notice to the other party in accordance with this paragraph.

Lessor: The School Board of Pinellas County, Florida
c/o Real Estate Department
11111 So. Belcher Rd.
Largo, FL 33773
Fax: (772) 547-7172

Lessee: City of St. Petersburg, Florida
Director, Real Estate and Property Management
P.O. Box 2842
St. Petersburg, FL 33731-2842
Fax: (727) 893-4134

28. **RELATIONSHIP BETWEEN PARTIES.** The relationship between the Parties is that of Owner/Lessor and Lessee.

29. **SEVERABILITY.** Should any section or any part of any section of this Lease be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable any other section or any part of any section in this Lease.

30. **HEADINGS.** The section headings of the paragraphs of this Lease are inserted herein for convenience and reference only, and shall not be considered or referred to in resolving questions of interpretation.

31. **NO CONSTRUCTION AGAINST PREPARER OF LEASE.** This Lease has been prepared by the Lessee and reviewed by the Lessor and its professional advisors. The Lessor and Lessor's professional advisors believe that this Lease expresses their agreement and that it should not be interpreted in favor of either the Lessee or Lessor or against the Lessee or Lessor merely because of their efforts in preparing it.

32. **LESSEE AS A MUNICIPAL CORPORATION.** Nothing contained herein shall be interpreted to require the Lessee to take any action or refrain from taking any action that would be adverse to its status as a municipal corporation; or to take or refrain from taking any action in its capacity as a municipal corporation not specifically required by this Lease.

SIGNATURE PAGES FOLLOW THIS PAGE

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed by their duly authorized representatives as of the day and year first above written.

WITNESSES: (as to Lessor)

Ann L. Simonetti

Witness Signature

Ann L. Simonetti

Typed, Printed or Stamped Name

Wendy M. Magilligan

Witness Signature

Wendy M. Magilligan

Typed, Printed or Stamped Name

LESSOR:

THE SCHOOL BOARD OF
PINELLAS COUNTY, FLORIDA

By: Fred Flamm
Chairperson

Attest: Michael A. Grego
Dr. Michael A. Grego,
Superintendent

Approved as to form and content:

Sherry J. Wallace
Board Attorney's Office

WITNESSES: (as to Lessee)

David Flintom
Witness Signature

David Flintom
Typed, Printed or Stamped Name

Cathy E. Davis
Witness Signature

Cathy E. Davis
Typed, Printed or Stamped Name

LESSEE: City of St. Petersburg, Florida

Kanika Tomalin
Kanika Tomalin
As Its: City Administrator

ATTEST:

Chan Srinivasa
Chan Srinivasa, City Clerk



REVIEWED:

Alfred Wendler
Alfred Wendler, Acting Director
Real Estate & Property Management

APPROVED BY:

Susan P. Ajoc
Susan P. Ajoc, Director
Community Service Director

APPROVED AS TO CONTENT:

Bradley S. Tennant
City Attorney (Designee)

APPROVED AS TO FORM:

Bradley S. Tennant
City Attorney (Designee)

By: Bradley S. Tennant
Assistant City Attorney
Legal: 00397593.doc v9

By: Bradley S. Tennant
Assistant City Attorney

EXHIBIT "A"
ILLUSTRATION

