

LEASE AGREEMENT

(4544 Orange Beach Boulevard)

THIS LEASE AGREEMENT (this “Lease”) is made effective as of the ___ day of February, 2023 (the “Effective Date”), by and between the **CITY OF ORANGE BEACH**, an Alabama municipal corporation (the “Landlord”), and **ORANGE BEACH CITY BOARD OF EDUCATION**, a city school system established by the City of Orange Beach, Alabama, pursuant to *Code of Alabama §16-11-1 et seq.*, (1975), as amended (the “Tenant”).

1. AGREEMENT. Landlord leases the building located at 4544 Orange Beach Boulevard, Orange Beach, Alabama 36561 (the “Premises”) to Tenant, and Tenant leases the Premises from Landlord, according to the terms and conditions of this Lease. Tenant, its employees, agents, contractors and invitees shall have the non-exclusive rights to the use of the adjacent parking lots, drive aisles, driveways, sidewalks, walkways and other similar facilities that are reasonably necessary for the access and use of the Premises. Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the configuration of such exterior facilities in such manner as it deems necessary or proper.

2. TERM. The term of this Lease shall commence as of the Effective Date hereof, and shall continue for a period of two (2) years. Notwithstanding the foregoing, (i) Tenant shall have the right to terminate this Lease upon ten (10) days advance written notice, and (ii) if Tenant vacates or abandons the Premises, Landlord shall have the right to terminate this Lease upon ten (10) days advance written notice.

3. RENT. There is no rent payable under this Lease.

4. UTILITIES. Landlord will pay for the reasonable utility services that Tenant uses at the Premises. Tenant agrees to use reasonable efforts to avoid any excess utility charges.

5. INSURANCE. Tenant will, at its sole expense, obtain and keep in force during the term of this Lease commercial general liability insurance with an occurrence limit of not less than One Million Dollars (\$1,000,000.00) for injury, death or property damage, insuring against any and all liability of Tenant with respect to the Premises or arising out of the maintenance, use, or occupancy of the Premises. Such policy shall name Landlord as an additional insured and shall contain a customary provision affording Landlord notice in writing in advance of any cancellation or lapse of coverage. Evidence of such coverage shall be provided to Landlord upon request from time to time.

6. USE OF THE PREMISES. During the term of this Lease, the Premises will be used only for school office and administrative purposes.

7. ENVIRONMENTAL LAWS. Tenant shall operate and maintain the Premises in compliance with all applicable environmental laws, regulations and ordinances, and Tenant will not release, generate, manufacture, store, treat, transport, or dispose of any “hazardous material” (as that term is defined in applicable environmental laws), on, in, under, or from the Premises, in violation of any applicable environmental laws, regulations or ordinances.

8. ASSIGNMENT AND SUBLEASES. Tenant shall not assign this Lease or sublet any part of the Premises, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

9. REPAIRS AND MAINTENANCE. Landlord shall be responsible for the repair, replacement and maintenance of the Premises, provided such repairs, replacement or maintenance are not occasioned by Tenant, Tenant's invitees or anyone in the employ or control of Tenant, in which case, Tenant shall be responsible for such items.

10. ALTERATIONS. Tenant will not make any alterations, additions, or improvements or series of related improvements to the Premises or any expenditures for same without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

11. END OF TERM. At the end of the Term of this Lease, Tenant will surrender the Premises in good order and condition, ordinary wear and tear, casualty and condemnation excepted; and, Tenant may remove from the Premises any trade fixtures, equipment and movable furniture owned by Tenant. After Tenant has removed its trade fixtures and equipment, Tenant will fully repair any damage occasioned by the removal thereof.

12. DAMAGE AND DESTRUCTION.

12.1 General. If the Premises or any portion thereof shall be damaged by fire, the elements, accident or other casualty (a "Casualty"), Tenant shall promptly notify Landlord of the same in writing.

12.2 Major Casualty. If the damage resulting from a Casualty cannot reasonably be anticipated to be repaired within two (2) months or would cost in excess of \$50,000 to repair (in either case, a "Major Casualty"), then Landlord shall have the right to terminate this Lease. To exercise such right of termination, Landlord shall give Tenant notice thereof within forty-five (45) days of the date that Landlord was notified of the Major Casualty, and the Lease shall terminate as of the date of such notice. Any insurance proceeds payable by reason of the Major Casualty shall be payable to Landlord.

12.3 Restoration. In the event of a Casualty which is not a Major Casualty, or in the event of a Major Casualty whereby Landlord does not exercise its right of termination, then Landlord shall commence and proceed with reasonable diligence to restore the Building to substantially the same condition in which it was immediately prior to the happening of the Casualty, except that Landlord shall not be required to spend an amount in excess of the insurance proceeds actually received by Landlord as a result of the Casualty. Any excess insurance proceeds shall belong to Landlord. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or the repair thereof. In the event any Casualty is caused by the negligence or willful misconduct of Tenant, Tenant shall be liable to Landlord for the cost of the repair and restoration of the Building caused thereby to the extent such cost and expense is not covered by insurance proceeds under policies provided by either Landlord or Tenant hereunder.

13. CONDEMNATION. If, by exercise of the right of eminent domain or by conveyance made in response to the threat of the exercise of such right (in either case a "Taking"), all or any material portion of the Premises is taken, or if so much of the Premises is taken that the Premises cannot be used by Tenant for the purposes for which it was used immediately before the Taking, this Lease will end on the

earlier of the vesting of title to the Premises in the condemning authority or the taking of possession of the Premises by the condemning authority (the “Condemnation Ending Date”). If, after a Taking, so much of the Premises remains that the Premises can be used for substantially the same purposes for which it was used immediately before the partial Taking, then this Lease will end as to that portion of the Premises so taken as of the Condemnation Ending Date. Tenant shall have no right or claim to any part of any award made to or received by Landlord for such Taking, and all awards for such Taking shall be made solely to Landlord. Tenant shall, however, have the right to pursue any separate award that does not reduce the award to which Landlord is entitled.

14. LANDLORD’S ACCESS. Landlord, its agents, employees, lender and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers, lenders, investors or tenants and to existing lenders and investors, (c) determine whether Tenant is complying with its obligations in this Lease, or (d) make repairs or perform such maintenance which this Lease allows Landlord to make in accordance with the terms of this Lease.

15. SIGNS. Tenant shall not place any signs on the Premises without the prior written consent of Landlord, which may be withheld in Landlord’s sole and absolute discretion.

16. INDEMNIFICATION. Tenant shall indemnify and defend Landlord, its agents, employees, officers, officials, successors and assigns and hold them harmless from any responsibility, loss, demands, claims, costs, liability, damages or expenses of any kind whatsoever (including incidental and consequential damages and including third-party claims), and all reasonable costs and expenses (including counsel fees and costs) relating thereto, whenever asserted or arising, which are imposed upon or incurred by any of them in connection with, resulting from or related to (a) a breach of any representation, warranty, covenant or agreement of Tenant contained in or made pursuant to this Lease, or (b) any injury or damage to the person, property or business of Tenant, any person claiming under Tenant, or any of the employees or invitees of Tenant, or any other person entering upon the Premises.

17. WAIVER AND RELEASE. Landlord shall not be liable for any damage to, injury to, loss of or death of any persons or property in or on the Premises or related to Tenant’s operations of the Premises or its business, or for damage or loss suffered by or caused by the business of Tenant, from any cause whatsoever, including any damage (including consequential or special damages), loss, injury or death resulting from or related to fire, steam, smoke, electricity, gas, water, rain, ice, snow, the breakage, leakage, obstruction or other defects of the pipes, wires, appliances, plumbing, air-conditioning sprinkler or lighting fixtures in or on the Premises, from theft, act of God; public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, explosion, falling objects, problems with any roof, subsurface matters, dampness, defects of the building, including structural and lateral supports and its roof, the construction, repair, or alteration of the Premises or from any acts or omissions of any visitor of the Premises, whether the said damage, loss, death or injury results from conditions arising upon the Premises, or from other sources. In furtherance thereof, Landlord shall not be liable in any manner to Tenant, its employees or invitees for any injury or damage to Tenant, Tenant’s employees or invitees or their property, caused by the criminal or intentional misconduct, or by any act or neglect of third parties or of Tenant or Tenant’s employees or invitees. Tenant waives and releases all claims against Landlord, its agents, employees, officers, officials, successors and assigns.

18. COVENANT OF QUIET ENJOYMENT. So long as no Event of Default has occurred and is continuing, and Tenant performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or any person claiming by or through Landlord.

19. LIMITATION ON TENANT'S RECOURSE. Tenant's sole recourse against Landlord, and any successor to the interest of Landlord in the Premises, is to the interest of Landlord, and any successor, in the Premises. Tenant will not have any right to satisfy any judgment which it may have against Landlord, or any successor, from any other assets of Landlord, or any successor.

20. NO WARRANTIES/PROPERTY TAKEN AS IS. The Premises is being leased in an "AS IS" condition and "WITH ALL FAULTS." No representations or warranties have been made or are made and no responsibility has been or is assumed by Landlord as to the condition of the Premises or any other fact or condition which has or might affect the Premises or the condition, repair, value expense of operation or income potential of the Premises.

21. EVENTS OF DEFAULT. The following occurrences are each an "Event of Default" on the part of Tenant: (i) Tenant breaches any covenant, agreement, term or condition that this Lease requires Tenant to perform, and the breach continues for a period of thirty (30) days after written notice by Landlord to Tenant, or (ii) any insurance policy which is required to be maintained by Tenant under Section 5 hereof lapses, is canceled or is terminated and a replacement policy meeting the requirements of Section 5 hereof is not in force and effect.

22. REMEDIES. Upon the occurrence of an Event of Default, then in addition to all other rights and remedies available under this Lease or pursuant to applicable law, Landlord shall have the following remedies:

(a) Landlord may terminate this Lease, in which event, Tenant shall immediately surrender possession of the Premises to Landlord;

(b) Landlord may sue for and collect any charges or amounts owed by Tenant hereunder; and/or

(c) Landlord may re-enter and re-let said Premises, from time to time, as agent of the Tenant, and such re-entry and re-letting or both, shall not discharge the Tenant from any liability or obligation hereunder, except that rents (i.e., gross rents less the expense of collecting and handling, and less commissions and less any rental concessions) collected as a result of such re-letting shall be credited to any liability of Tenant hereunder up to the amount due under the terms of this Lease and the balance, if any, credited to the Landlord.

In the event Tenant fails to surrender the Premises after a termination hereof, Landlord may pursue all applicable legal and equitable remedies available under applicable law to dispossess Tenant. No remedy herein or otherwise conferred upon or reserved to a party hereunder shall be considered to exclude or suspend any other remedy herein, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy available to a party may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

23. MISCELLANEOUS

(a) No Waiver. No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement.

(b) Notices. Any notice which is required or permitted to be given by either party under this Lease shall be in writing and must be given only by certified mail, return receipt requested, by hand delivery or by nationally recognized overnight courier service at the addresses set forth below. Any such notice shall be deemed given (a) when delivered personally, (b) three (3) days after being mailed by certified mail, return receipt requested, or (c) one day after being sent by overnight courier. Either party may change its notice address by notice to the other party in accordance with the terms of this Section. The following are the initial notice addresses for each party: Landlord: 4544 Orange Beach Boulevard, Orange Beach, Alabama 36561, Attn: Mayor; Tenant: 4544 Orange Beach Boulevard, Orange Beach, Alabama 36561, Attn: Superintendent.

(c) Attorneys' Fees. In the event that either party files suit in any court against the other party to enforce the terms of this Lease against the other party or to obtain performance by it hereunder, the prevailing party, or that party which substantially prevails, will be entitled to recover all reasonable costs, including reasonable attorneys' fees, from the other party as part of any judgment in such suit.

(d) Waiver of Jury Trial. LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES (EXCEPT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE BROUGHT BY A THIRD PARTY).

(e) Invalidity of Particular Provisions. If any term of provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(f) Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof, and supersedes all prior discussions, negotiations and agreements between the parties with respect to such subject matter, whether oral or written.

(g) Survival. In addition to any rights and obligations that arise under this Agreement prior to the end of the Term hereof, which shall be governed by and construed in accordance with the terms hereof, the provisions of Sections 11, 16 and 17 shall survive the end of the Term hereof and remain in force and effect thereafter.

(h) Counterparts. This Lease may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(i) Construction. The term “including” means including without limitation. This Agreement is the result of negotiations between the parties, and each party hereto has consulted with its own legal counsel regarding this Agreement and such party’s rights and obligations hereunder. If any dispute arises regarding any of the provisions of this Agreement, this Agreement shall be construed as if drafted jointly by the parties in all respects, and the doctrine of construing this Agreement against the drafter thereof shall be disregarded and not followed.

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IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed effective as of the day and year first above written.

TENANT:

ORANGE BEACH CITY BOARD OF EDUCATION

By: _____
Randy Wilkes
Its Superintendent

LANDLORD:

CITY OF ORANGE BEACH

By: _____
Tony Kennon
Its Mayor

ATTEST:

City Clerk

[SEAL]

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Randy Wilkes, whose name as Superintendent of the ORANGE BEACH CITY BOARD OF EDUCATION, a city school system established by the City of Orange Beach, Alabama, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such Superintendent and with full authority, executed the same voluntarily for and as the act of said Board of Education.

Given under my hand and official seal this the ____ day of February, 2023.

[SEAL]

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tony Kennon, whose name as Mayor of the CITY OF ORANGE BEACH, an Alabama municipal corporation, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation, on the day the same bears date.

Given under my hand and official seal this ____ day of February, 2023

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____