

**LICENSE AGREEMENT**

*(K-4 Expect Excellence Program)*

**THIS LICENSE AGREEMENT** (this “License”) is made effective as of the \_\_\_ day of February, 2023 (the “Effective Date”), by and between 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 (“Licensor”) and the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation (“Licensee”).

WHEREAS, Licensor owns and operates an elementary school (the “School”) on the land located in the City of Orange Beach, Baldwin County, Alabama, and more particularly described on Exhibit A attached hereto and made a part hereof (the “Land”), with an address of 4900 South Wilson Boulevard, Orange Beach, Alabama 36561; and

WHEREAS, Licensee provides and operates a free after school program for Pre-K and elementary school students called “Expect Excellence” (the “Program”) at Licensee’s Recreation Center located at 4849 Wilson Boulevard, Orange Beach, Alabama 36561 (the “Recreation Center”); and

WHEREAS, the facilities at the Recreation Center are not suitable to accommodate the K-4 age level of attendees of the Program (the “K-4 Attendees”); and

WHEREAS, the parties hereto desire that the Licensee provide the Program for the K-4 Attendees at the School; and

WHEREAS, the Program provides a substantial benefit to the Licensor and its students; and

WHEREAS, the parties desire to set forth the terms and conditions by which the Licensee shall be allowed to utilize the School for purposes of providing and operating the Program for K-4 Attendees.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

**1. AGREEMENT TO LICENSE.** Licensor grants to Licensee the right of possession, occupancy and use with respect to the following areas and amenities of the School, under the terms and conditions stated herein: the cafeteria, the library (space, tables, chairs and television), the pre-K playground, restrooms, hallways, corridors, stairs, water fountains and the conference room adjacent to the library for two cabinets (in order to store supplies therein). For the avoidance of doubt, the use by the Licensee shall include the right to use the parking lots, drive aisles, driveways, sidewalks, walkways and other similar facilities on the Land that are reasonably necessary for the access and use of the School in accordance with the purposes stated herein. The license granted hereunder is coupled with an interest.

2. **TERM.** The term of this License shall commence as of the Effective Date, and shall continue for a period of ninety-nine (99) years, except that the Licensee shall have the unilateral right to terminate this License upon providing written notice of termination to the Licensor at any time.

3. **LICENSE FEE.** Licensee shall pay a fixed license fee to Licensor in the amount of \$100.00 per year.

4. **PERIOD OF USE.** Licensee's period of use for the Program shall generally be Monday through Friday from after school until 6:00 p.m. on the days when school is in session, as well as summer school, if the City conducts the Program during summer school.

5. **CONDITIONS FOR LICENSEE'S USE OF ELEMENTARY SCHOOL.** The Licensee's use shall at all times be under the direction, supervision and control of agents and employees of the Licensee. The Licensor shall not be responsible for supervision of any activities involving the Licensee's use of the School.

6. **LICENSEE'S INSURANCE OBLIGATIONS.** At all times that the Licensee utilizes the School, it shall maintain, at its sole cost, general liability insurance with such coverages and in such amounts as mutually agreed upon by the Licensee and the Licensor. All insurance shall be carried by insurance companies authorized to transact business in the State of Alabama, selected by the Licensee. The Licensor shall be named as an additional insured on all policies purchased in satisfaction of the requirements contained in this Section.

7. **WAIVER OF SUBROGATION.** To the extent permitted by the Alabama Department of Risk Management State Insurance Fund, the Licensor waives any and all rights to recover against the Licensee or any of its officers or employees, for any loss or damage arising from any cause covered by any insurance carried by the Licensor.

8. **CODE COMPLIANCE.** The Licensor will be solely responsible for the compliance of the School (including all parking lots, drive aisles, driveways, sidewalks and walkways), with all applicable building codes, laws, ordinances, orders, rules and regulations whether local, state, federal, or promulgated by other agencies or bodies having jurisdiction over the School, including the Americans with Disabilities Act.

9. **SYSTEMS MAINTENANCE.** The Licensor will, at its sole cost and expense, maintain the School and make repairs, restorations and replacements to the School as and when needed to maintain it in appropriate condition for its use for the Program.

10. **JANITORIAL SERVICES.** The Licensor will provide janitorial services for the School.

11. **UTILITIES.** The Licensor shall ensure that water, sewer, electricity, gas and telecommunications utility services are available to the School, and shall be responsible for the payment of the utility charges therefor.

**12. EVENTS OF DEFAULT.** The following occurrences are each an “Event of Default” on the part of the Licensee: (a) Licensee shall fail to pay the annual license fee when and as due, and the default continues for thirty (30) days after written notice from Licensor; or (b) Licensee breaches any of the other agreements, terms, covenants, or conditions that this License requires Licensee to perform, and the breach continues for a period of ninety (90) days after written notice by Licensor to Licensee.

**13. REMEDIES.** Upon the occurrence of an uncured Event of Default, then Licensor may, as its sole and exclusive remedy, terminate this License, in which event Licensee shall promptly surrender possession of the School to Licensor. However, Licensor shall not be entitled to terminate this License due to such an uncured Event of Default, unless the written notice of such default (i) contains a conspicuous statement that Licensor will terminate the License if such default is not cured within such cure period, and (ii) is conclusively shown to have been delivered to and received by both the Mayor and the City Administrator, at the Orange Beach City Hall.

**14. COVENANT OF QUIET ENJOYMENT.** Licensee’s possession of the School will not be disturbed by Licensor or any persons claiming by or through Licensor.

**15. LIABILITY OF LICENSOR.** Licensor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the School by Licensee, its agents, employees or invitees or caused by or arising from any act or omission of Licensee, or any of its agents, employees or invitees, unless such loss, damage or injury is a result of the gross negligence or willful misconduct of Licensor.

**16. RECORDING.** The Licensee shall have the right to record this Agreement or a memorandum hereof (in such form as it reasonably determines) against the School in the real estate records of the Office of the Judge of Probate of Baldwin County, Alabama.

**17. CONSTRUCTION.** “Including” or “include” shall mean including (or include) without limitation.

**18. COUNTERPARTS.** This License 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Licensor and Licensee have caused this License Agreement to be duly executed by its duly authorized representative effective as of the Effective Date.

**LICENSEE:**

CITY OF ORANGE BEACH, ALABAMA

By: \_\_\_\_\_  
Tony Kennon, Mayor

Attest:

\_\_\_\_\_  
City Clerk

**LICENSOR:**

ORANGE BEACH CITY BOARD OF  
EDUCATION

By: \_\_\_\_\_  
Randy Wilkes, Superintendent

[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 Tony Kennon, whose name as Mayor of the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation, is signed to the foregoing License Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License Agreement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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 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 License Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License 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: \_\_\_\_\_

## Exhibit A

### Description of the Land

BEGINNING AT A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF FOURTH STREET, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 1, BLOCK 9, BEAR POINT HEIGHTS, AS RECORDED IN PLAT BOOK 1, PAGE 153, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY ALABAMA; THENCE RUN S00°13'23"W, LEAVING SAID SOUTH RIGHT-OF-WAY LINE, 399.97 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THIRD STREET; THENCE RUN S89°21'30"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, 500.00 FEET TO THE POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY LINE AND THE EAST RIGHT-OF-WAY LINE OF AVENUE D; THENCE RUN N00°09'31"E, LEAVING SAID NORTH RIGHT-OF-WAY LINE AND ALONG SAID EAST RIGHT-OF-WAY LINE, 100.02 FEET TO A POINT; THENCE RUN S89°23'41"W, LEAVING SAID EAST RIGHT-OF-WAY LINE AND ALONG THE NORTH LINE OF LOTS 7 AND 10, BLOCK 7, SAID BEAR POINT HEIGHTS, AN EXTENSION THEREOF, 350.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF WILSON BOULEVARD; THENCE RUN N00°10'58"E, ALONG SAID EAST RIGHT-OF-WAY LINE, 726.00 FEET TO THE POINT OF INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE AND THE SOUTH RIGHT-OF-WAY LINE OF FIFTH STREET; THENCE RUN N89°29'40"E, LEAVING SAID EAST RIGHT-OF-WAY LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, 650.00 FEET TO THE POINT OF INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE AND THE WEST RIGHT-OF-WAY LINE OF AVENUE C; THENCE RUN S00°08'26"W, LEAVING SAID SOUTH RIGHT-OF-WAY LINE AND ALONG SAID WEST RIGHT-OF-WAY LINE, 425.10 FEET TO THE POINT OF INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE AND SAID SOUTH RIGHT-OF-WAY LINE OF FOURTH STREET; THENCE RUN N89°14'58"E, LEAVING SAID WEST RIGHT-OF-WAY LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, 200.00 FEET TO THE POINT OF BEGINNING. CONTAINING 13.35 ACRES MORE OR LESS AND LYING IN GRANT SECTION 12, TOWNSHIP 9 SOUTH, RANGE 5 EAST, BALDWIN COUNTY, ALABAMA.