

AMENDED AND RESTATED LEASE AGREEMENT

This **AMENDED AND RESTATED LEASE AGREEMENT** (the "Agreement") is made and entered into as of the last signature date set forth below (the "Effective Date"), by and between SCHOOL BOARD of Brevard County, Florida, a political subdivision of the State of Florida, with a principal place of business at 2700 Judge Fran Jamieson Way, Melbourne, FL 32940 ("SCHOOL BOARD"), and the City of Palm Bay, 120 Malabar Rd SE, Palm Bay, FL 32907 ("CITY")

WHEREAS, SCHOOL BOARD and CITY are desirous of cooperating with each other in order for CITY to utilize vacant property owned by SCHOOL BOARD ("PROPERTY") for Disc Golf;

WHEREAS, the PROPERTY is located on a 24.22-acre parcel of land in Port Malabar Unit 41 bordered on the North by Krassner Drive NW and on the West by Melbourne Tillman Canal #59 and Fred Poppe Regional Park, with said PROPERTY having been conveyed to SCHOOL BOARD by GENERAL DEVELOPMENT CORPORATION, a corporation no longer in existence;

WHEREAS, the PROPERTY has been designated for a future school site and SCHOOL BOARD wishes to lease the PROPERTY, on a temporary basis, until it is needed for the school construction, making improvements upon the PROPERTY which will inure to the benefit of SCHOOL BOARD as it will have to make such Improvements in order to build the future school;

WHEREAS, Disc Golf will provide physical activities for all residents;

WHEREAS, SCHOOL BOARD and CITY desire to enter into this Agreement subject to, and in accordance with, the terms and conditions set forth below.

NOW THEREFORE, in consideration of the premises and the mutual covenants and promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SCHOOL BOARD and CITY hereby agree to cooperate with each other in carrying out the above purposes and therefore covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Property.
 - a. The PROPERTY was conveyed by GENERAL DEVELOPMENT CORPORATION to SCHOOL BOARD by a certain Warranty Deed recorded on March 20, 1987 in Official Records Book 2784/, Page 2684, of the Public Records of Brevard County, Florida ("DEED"), a copy of which is attached hereto as Exhibit "A."
 - b. The DEED contained a restrictive covenant that the primary use of the PROPERTY be limited to the development, construction, and operation of a public school.
 - c. A copy of a sketch of the PROPERTY, and the overall area plan of the area is attached hereto as Exhibit "B."
 - d. Brevard County Government has assigned a temporary address (with Parcel ID# 28-36-33-01-A) for the PROPERTY that will not post to the Property Appraiser's website but will be in the Brevard County permitting system to enable the proper permits to be pulled by CITY.
3. Term. The term of this Agreement shall commence on December 15, 2020 and shall continue until 11:59 p.m. on December 14, 2030, unless terminated earlier, and may be renewed annually upon the express written consent of the Parties (the "Term").

4. License to Use. During the Term, subject to all provisions set forth herein, SCHOOL BOARD grants to CITY an exclusive license to use and occupy the PROPERTY, more particularly identified in Section 2 above for the purpose of Disc Golf and related Tournaments, subject to SCHOOL BOARD's right to use the PROPERTY for SCHOOL BOARD-related activities that do not interfere with the Disc Golf Course.
5. Use Fee.
 - a. In exchange for the right to use and occupy the PROPERTY as contemplated herein, CITY shall lease this property at a cost of \$10.00 per year.
 - b. Notwithstanding the foregoing, SCHOOL BOARD'S Superintendent reserves the right to waive any fees at his discretion.
6. Site Improvements.
 - a. CITY is solely responsible for the installation and cost of any site Improvements necessary for Disc Golf.
 - b. CITY shall cause for a barrier to be constructed to separate the improved and unimproved residential lots abutting the PROPERTY.
 - c. All leasehold Improvements shall remain on the site and will inure to the benefit of SCHOOL BOARD in the event of contract termination. Should termination take place, the SCHOOL BOARD will advise the CITY which improvement must stay and those that must be removed. The CITY shall be responsible for the cost of removal of improvements not wanted by the SCHOOL BOARD.
7. Conditions of Use.
 - a. CITY shall take all measures necessary to prevent disturbances of residents in the area of the PROPERTY when in use.
 - b. CITY shall take all measures necessary to prevent parking or trespassing on residential lots during the use of the PROPERTY.
 - c. CITY may, and SCHOOL BOARD hereby expressly waives its Policies related to, the sale, use, and consumption of beer, wine, and alcoholic beverages on the PROPERTY. CITY agrees to abide by all laws relating to the service of alcohol, including, but not limited to, Sections 562.11 (selling, giving, or serving alcoholic beverages to a person under 21 years of age), 562.111, and Chapter 856 of the Florida Statutes and any and all applicable ordinances, rules, or regulations from all entities having jurisdiction. CITY fully releases, indemnifies, and holds harmless SCHOOL BOARD, its agents, servants, and employees, with regard to any injury sustained by any person as a result of the service to or consumption of alcohol by any person during use of the PROPERTY.
 - d. The CITY shall be responsible for all activities, accidents, losses, and liabilities that occur on this property in the same manner as a property owner. The SCHOOL BOARD shall have no obligations or liabilities as a property owner that occurs on the site during the term of this lease as that right is being transferred to the CITY during the term of this lease.
 - e. The CITY shall be responsible for any exposures to general liability or pollution liability and any and all other risks associated with this property both those above ground and underground for the term of the lease. In the event there is any issue in either of these areas, the CITY shall resolve them at no cost to the SCHOOL BOARD.

8. Permits.

- a. The CITY shall obtain a permit from SCHOOL BOARD's Permitting Department for any site improvements necessary for Disc Golf. A Certificate of Completion for any such improvements shall be obtained prior to use of the PROPERTY.
- b. The CITY shall obtain and maintain any and all permits necessary for Disc Golf from all entities having jurisdiction.

9. Utilities. During the Term, the CITY shall be responsible for and shall pay all charges incurred for utility service to the PROPERTY, including electric, water, and sewer, as applicable. SCHOOL BOARD does not warrant the uninterrupted supply of any utility and shall not be liable for any damages resulting to the CITY from the interruption of any of the aforementioned services.

10. Legal Compliance. During the Term, the CITY shall comply with all federal, state, and local laws, regulations, or ordinances.

11. NOTICE - CRIMINAL BACKGROUND SCREENING. THE CITY AFFIRMATIVELY STATES, AND SCHOOL BOARD EXPRESSLY ACKNOWLEDGES, THAT INDIVIDUALS WHO HAVE NOT BEEN SUBJECTED TO CRIMINAL BACKGROUND SCREENING AS REQUIRED UNDER SECTION 1012.32, FLORIDA STATUTES, MAY BE PRESENT ON THE PROPERTY DURING THE TERM.

12. Assumption of Risk. The CITY expressly acknowledges and agrees that it assumes any and all risk of bodily injury, personal injury, death, or property damage or loss arising out of or related to the use of the PROPERTY for the purpose contemplated by this Agreement suffered by anyone utilizing the PROPERTY for Disc Golf. The CITY acknowledges and agrees that the SCHOOL BOARD has not made any promises, guarantees, or warranties regarding the adequacy or fitness of the PROPERTY for the purpose contemplated by this Agreement, and the City hereby agrees to accept the PROPERTY in an "AS IS" condition with all faults, known and unknown. TO THE EXTENT PERMITTED BY LAW, SCHOOL BOARD HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATED TO THE CITY'S USE OF THE PROPERTY FOR THE PURPOSE CONTEMPLATED BY THIS AGREEMENT. Nothing herein shall be deemed a waiver by SCHOOL BOARD of its sovereign immunity rights under the laws of the State of Florida, nor deemed as consent by SCHOOL BOARD to be sued by third parties.

13. Indemnification. To the extent allowed by law, City shall release, indemnify, defend, and hold harmless SCHOOL BOARD, their agents, servants, and employees, from all liability resulting from the City's negligence or intentional acts for any injury or damage which occurs on the PROPERTY or the adjacent properties pursuant to this Agreement and which occurs during the course of Disc Golf Activities. This Agreement to indemnify and hold harmless includes an obligation to indemnify and hold SCHOOL BOARD harmless for any negligence on the part of CITY. The CITY's promise to indemnify and hold harmless also includes an obligation to assume responsibility for reasonable expenses of investigation, litigation, judgment, and/or settlement of any complaint, claim, or legal action, up to the sovereign immunity limits. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities granted to SCHOOL BOARD and the City of Palm Bay as provided by law.

14. Insurance.

- a. At all times during the Term, unless the CITY asserts its rights to the protections and coverage found in Florida Statute 768.28, the CITY shall provide and maintain, at its sole cost and expense, and furnish a Certificate of Insurance naming The School Board of Brevard County, Florida as certificate holder and additional insured with general liability limits of at least \$1,000,000.00 per occurrence, \$10,000,000.00 aggregate.

- b. Failure to have adequate proof of current insurance meeting the requirements of this section or to file such proof with SCHOOL BOARD shall entitle SCHOOL BOARD to Immediately suspend the privilege of the CITY to use the PROPERTY until such proof is furnished and shall warrant termination of this Agreement, provided; that SCHOOL BOARD notifies the CITY of the CITY'S failure to deliver such certificate, and further provided that the CITY does not deliver such certificate within ten (10) days after such notice by SCHOOL BOARD. By requiring this insurance, SCHOOL BOARD does not represent that coverage and limits will necessarily be adequate to protect the CITY, and such coverage and limits shall not be deemed as a limitation on the CITY's liability under this Agreement.
- c. Nothing herein shall be deemed a waiver by SCHOOL BOARD of its rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes, nor any sovereign immunity rights beyond any statutory limited waiver that may have been or may be adopted by the Florida Legislature. Nothing in this Agreement shall Inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity.

15. No Assignment or Subletting. The CITY shall not assign or transfer this Agreement or sublet any portion of the PROPERTY without the written consent of SCHOOL BOARD.

16. No Joint Venture. The CITY acknowledges and agrees that SCHOOL BOARD's sole role in this matter is to authorize the CITY to use and occupy the PROPERTY for the purposes described herein. This Agreement does not constitute a Joint venture between the CITY and the SCHOOL BOARD.

17. Public Records.

- a. IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BREVARD PRODUCTION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SCHOOL BOARD'S CUSTODIAN OF PUBLIC RECORDS AT Plguero.Casey@BrevardSchools.org, 321-633-1000 ext. 453, The School Board of Brevard County, Florida, 2700 Judge Fran Jamieson Way, Viera, FL 32940.
- b. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. The CITY acknowledges Its legal obligation to comply with Section 119.0701, F.S. The CITY shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by SCHOOL BOARD in order to perform the scope of services. The CITY shall comply with all requirements for retaining public records and shall transfer, at no cost to SCHOOL BOARD, all public records in the possession of the CITY upon a request for such public records. See Section 119.0701(2)(b)4, Florida Statutes, for additional record keeping requirements.
- c. A request to inspect or copy public records relating to SCHOOL BOARD's contract for services must be made directly to SCHOOL BOARD's Custodian of Public Records. If SCHOOL BOARD does not possess the requested records, SCHOOL BOARD's Custodian of Public Records shall immediately notify the CITY of the request. The CITY must provide a copy of the records to SCHOOL BOARD or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. If the CITY does

not timely comply with SCHOOL BOARD's request for records, SCHOOL BOARD shall be able to sue for breach of contract and the prevailing Party shall be entitled to attorney's fees.

- d. Should the CITY fall to provide the requested public records to SCHOOL BOARD within a reasonable time, the CITY understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, Florida Statutes.
- e. The CITY shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if the CITY does not transfer the records to SCHOOL BOARD. Upon completion, expiration, or termination of this Agreement, the CITY shall transfer, at no cost to SCHOOL BOARD, all public records in its possession or keep and maintain public records required by SCHOOL BOARD to perform the services. If the CITY transfers all public records to SCHOOL BOARD, the CITY shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the CITY keeps and maintains public records upon completion, expiration, or termination of this Agreement, the CITY shall meet all applicable requirements for retaining public records and provide requested records to SCHOOL BOARD pursuant to the requirements of this Article. All public records stored electronically must be provided to SCHOOL BOARD In a format that is compatible with the information technology systems of SCHOOL BOARD.

18. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of (a) the date and time the same are personally delivered or transmitted electronically (i.e., facsimile or e-mail); (b) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (c) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CITY: Parks and Recreation Director
1150 DeGroot Road SW
Palm Bay, FL 32908
Email: Fred.Poppe@palmbayflorida.org

SCHOOL BOARD: Superintendent
2700 Judge Fran Jamieson Way
Viera, FL 32940
Email: aguirre.tammy@brevardschools.org

- 19. Non-Discrimination. During the Term, the CITY shall not discriminate on the basis of age, race, national origin, color, ethnicity, genetic information, religion, sex, gender, sexual orientation, pregnancy, disability, marital status, veteran status, ancestry, or political affiliation in any program or activity conducted on or about the Facility.
- 20. Force Majeure. If the PROPERTY is rendered unsuitable by reason of force majeure, the Parties are released from their respective obligations under this Agreement. Force majeure shall mean fire, earthquake, hurricane, water event, act of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of the Parties.

21. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of Florida, with venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Brevard County, Florida; each Party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

22. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

23. Counterparts. This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The Parties may execute different counterparts of this Agreement, and, If they do so, the signature pages from the different counterparts may be combined to provide one Integrated document and taken together shall constitute one and the same instrument.

24. Third Party Obligations. This Agreement is made solely for the benefit of the Parties named in this Agreement, and is not intended to create rights or any causes of action In any third parties.

25. Waiver. No waiver of any provision of this Agreement, or any right or remedy arising under any provision of this Agreement, shall be effective unless such waiver is In writing and executed by an authorized representative of the waiving Party. No waiver with respect to a specific circumstance or event shall be deemed a waiver as to any other circumstance or event.

26. Participation. All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any Party regardless of which Party is deemed to have drafted the Agreement.

27. Termination. This Agreement may be terminated by the SCHOOL BOARD or the CITY at any time and for any reason upon 60 days' written notice to the other Party. In the event of termination, a Party shall remain responsible for Its respective obligations arising under this Agreement during the period the Agreement remains In effect. Notwithstanding the foregoing, the obligations set forth in paragraphs 4, 6, 10, 12-17, and 20-25 shall survive the termination of this Agreement.

28. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any Party to the extent Incorporated into this Agreement.

29. Amendments and Modifications. No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, THIS Agreement was executed on the date(s) set forth below.

WITNESSES

Print: _____

Print: _____

CITY OF PALM BAY

By: _____

Print: _____

Its: _____

Date: _____

WITNESSES

Print: _____

Print: _____

SCHOOL BOARD OF BREVARD COUNTY, FL

By: _____

Print: _____

Its: _____

Date: _____

Exhibit A

RETURN TO TC
CHICAGO TITLE INSURANCE COMPANY
670 NORTH COURTENAY PKWY.
MERRITT ISLAND, FLA. 32952

Rec. 9.00
Stamps 908.50
917.50

RECEIVED
9.00
908.50
917.50

This instrument prepared by:
NED M. SHANDLOFF, ESQUIRE
1111 So. Bayshore Drive
Miami, Florida 33131

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED Made and entered this 12th day of March 1987 by GENERAL DEVELOPMENT CORPORATION, a corporation existing under the laws of Delaware, and having its principal place of business at 1111 South Bayshore Drive, Miami, Florida 33131, hereinafter called the Grantor, to THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, whose post office address is 1260 South Florida Avenue, Rockledge, Florida 32955, hereinafter called the Grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee all that certain land situate in Brevard County, Florida, vis:

✓ Tract A of PORT MALABAR UNIT FORTY ONE, according to the plat thereof, as recorded in Plat Book 21, Pages 36 through 42, inclusive, of the Public Records of Brevard County, Florida.

This Deed is executed subject to taxes and special assessments assessed for the year 1987 and all subsequent years and to conditions, easements, limitations and restrictions of record.

Grantee acknowledges that a Development of Regional Impact Scheduling Agreement dated February 10, 1978 has been entered into between General Development Corporation and the Florida Division of State Planning. A Master Plan has been filed pursuant to said Agreement.

The Grantee's development and improvement of this real property shall be in compliance with the Master Plan described above and on file with the Florida Division of State Planning as of the date of the recording of this Deed, or a revised Master Plan with which said Grantee is in agreement. Chapter 380, Florida Statutes, and Chapter 27-F, Florida Administrative Code, shall be applied to this real property notwithstanding the existence of said Development of Regional Impact Scheduling Agreement, and said Grantee shall not be bound by any Development of Regional Impact filing commitments made by Grantor by virtue of said Agreement as distinguished from any legal responsibility imposed upon said Grantee by Chapter 380, Florida Statutes, and Chapter 27-F, Florida Administrative Code.

Further, the following restriction shall remain in full force and effect for a period of twenty years from the date of recordation of this Deed:

The parties acknowledge and agree that the premises shall be used for the sole purpose of school use, and any modification or change in such use will require the consent and approval of Grantor, which consent will not be unreasonably withheld.

If Grantor commences legal proceedings to enforce the provisions of the above restriction, Grantee, its successors or assigns, shall be obligated to pay Grantor's costs and legal expenses.

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TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

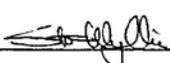
TO HAVE AND TO HOLD, THE SAME IN FEE SIMPLE FOREVER.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever, and that said land is free of all encumbrances except as above set forth.

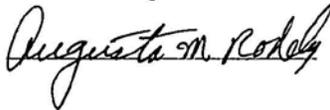
IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered in the presence of:

GENERAL DEVELOPMENT CORPORATION



BY 
HAROLD W. FENNO, SR. VICE PRES



(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HAROLD W. FENNO, Senior Vice President of the corporation named as Grantor in the foregoing deed and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of March 1987.

My Commission Expires:


NOTARY PUBLIC
State of Florida at Large

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EIP JULY 24, 1990
BONDED THRU GENERAL INS. UNO.



