

ORDINANCE NO. 1593

AN ORDINANCE AUTHORIZING THE CANBY CITY ADMINISTRATOR TO AMEND THE GROUND LEASE WITH CANBY SCHOOL DISTRICT NO. 86 TO EXTEND THE TERM AND CREATE A RIGHT OF FIRST REFUSAL

WHEREAS, the City of Canby owns its Swim Center and Adult Center buildings atop property owned by the Canby School District No. 86;


WHEREAS, the City of Canby and the Canby School District have an ongoing ground lease for this arrangement; and

WHEREAS, the City and School District both desire to amend the current ground lease to include a longer 10-year term and a right of first refusal.

NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

1. The Canby City Council authorizes the City Administrator to enter into the attached amendment to the ground lease between the City of Canby and Canby School District No. 86.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 18, 2023, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, February 1, 2023, commencing at the hour of 7:00 p.m. in the Council Meeting Chambers located at 222 NE 2nd Avenue, 1st Floor, Canby, Oregon.



Melissa Bisset, CMC
City Recorder

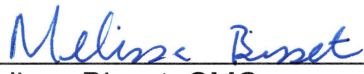
PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on February 1, 2023, by the following vote:

YEAS 5 NAYS 0



Brian Hodson
Mayor

ATTEST:



Melissa Bisset, CMC
City Recorder

**AMENDMENT TO GROUND LEASE BETWEEN CANBY SCHOOL DISTRICT NO. 86
AND CITY OF CANBY**

This amendment alters the **GROUND LEASE** (originally dated August 3, 2016), between the Canby School District No. 86 (Landlord) and the City of Canby (Tenant) regarding the real property located beneath and around the Canby Swim Center and Canby Adult Center. The **GROUND LEASE** between the parties will remain in full force and effect, and the parties agree here that the lease will only be changed in the following ways:

Term of the Lease: Both parties agree to a ten (10) year lease starting on July 1, 2022 and extending until July 1, 2032. The lease shall automatically renew for two (2) successive five (5) years periods at the end of the original ten (10) year period unless either party wishing to terminate the **GROUND LEASE** provides the other party advanced, written notice of such intent to terminate on or before the January 1st prior to the expiration of the then existing lease term.

Section 2.2 of the Ground Lease is hereby amended and restated to read as follows:

Property Use as Rent: Tenant agrees to offer use of pool and services to Landlord without charge, in the same manner and at a level of use equal to the average annual use of Landlord for the period beginning July 1, 2010 through June 30, 2015, and the Tenant agrees to provide the swim lesson program for all district grade two (2) students and the Canby High School swim team's customary uses of the pool at no added cost to the Landlord.


Right of First Refusal: In the event that the Landlord attempts to sell the property associated with this **GROUND LEASE** at any time within the term of the lease, Landlord agrees to first offer to sell the property to Tenant at the current market value as reasonably determined by Landlord at the time of the offer. This offer shall be in writing and remain open and valid for at least sixty (60) days or until the parties agree on acceptable terms of the offer, leading to acceptance by both parties, if sooner. Both parties are cognizant of the need to work through public Boards that must act through duly-noticed public meetings, so the parties agree to act in good faith to appropriately secure this right of first refusal in the event that the purchase or other conveyance of this property becomes a possibility.

All other terms, conditions, and provisions of the underlying **GROUND LEASE** remain the same. If any of the terms or conditions conflict with these amendments, these amendments supersede the older terms and conditions. If any term, condition, or provision of this Lease is found to be unlawful by a final decision of a court of competent jurisdiction or ruling of any administrative agency, said provision shall be modified to comply with said law or decision if possible, and the other remaining provisions of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned attest their authority to sign and have caused this amendment to the GROUND LEASE to be duly executed and binding upon the parties.

FOR THE LANDLORD:

CANBY SCHOOL DISTRICT NO. 86


Signature: 

Print Name/Title: Dr. Aaron Downs, Superintendent

Date: May 23, 2022

FOR THE TENANT:

CITY OF CANBY

Signature: 

Print Name/Title: Scott Archer, City Administrator

Date: 2/16/23

The GROUND LEASE, a thirteen (13) page document, is attached as Exhibit A and contains a description of the property on the final page.

Exhibit "A"

GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into this 3rd day of August 2016 by and between the following parties:

LANDLORD: Canby School District No. 86
1130 South Ivy Street
Canby, OR 97013

and

TENANT: City of Canby, an Oregon
municipal corporation
PO Box 930
Canby, OR 97013

Landlord owns the fee title to the following property (the "Property"):

Legally described in Exhibit "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, Landlord hereby leases the Property to Tenant, and Tenant leases the Property from Landlord, on the terms and conditions set forth in this Lease:

1. Lease of Property to Tenant; Lease Term; Possession

1.1 **Lease of Property to Tenant.** Landlord hereby leases the Property to Tenant, and Tenant leases the Property from Landlord, for the term, at the rental, and upon all of the conditions set forth in this Lease.

1.2 **Term of Lease.** This Lease shall commence on the 1st day of August, 2016 (the "Commencement Date") for one (1) full lease year (plus the partial month, if any, in which this Lease commences), unless sooner terminated or extended as provided in this Lease.

1.3 **Option to Renew.** This Lease shall automatically renew for successive periods of one (1) year each on the following terms and conditions, unless either party wishing to terminate the Lease provides the other party notice of such intent to terminate the Lease on or before January 1st, prior to the expiration of the then existing Lease Term.

1.3.1 In the event of notification of cancellation, the Lease shall terminate thereafter on June 30th of such year;

1.3.2 Landlord may increase the amount of base rent for any renewal term by providing notice to Tenant on or before January 1st prior to the expiration of the then existing Term of Lease. Any increase in base rent shall become effective July 1st of that that year.

1.3.3 If the increase in base rent referenced above cannot be mutually agreed on by the parties hereto, the amount of increased base rent shall be fixed by three arbiters whose decision shall be binding on the parties. One arbiter shall be appointed by the Landlord, one by the Tenant, and one appointed by the other two arbiters. The fees and costs of such arbiters shall be shared equally by the parties.

1.4 **Possession.** Tenant will be entitled to possession of the Property for purposes of this Lease upon the mutual execution of this Lease.

1.5 **Property Leased "As Is".** Except as otherwise expressly set forth in this Lease, the Property is leased to Tenant in its "As Is" condition, subject to any and all patent and latent defects and faults, without reliance upon any representation by Landlord as to the condition or suitability of Property for any intended use or purpose by Tenant and without any representation or warranty by Landlord as to its compliance with applicable Legal Requirements (as defined below) or other matters, and Tenant further acknowledges that Tenant will be relying solely on its own skill, judgment and discretion in deciding whether to lease the property.

2. **Rental**

2.1 **Annual Base Rent.** (Initial Term). Tenant shall pay to Landlord as rent for the Property the sum of \$20,000 per year, in the form of monthly Lease payments of \$1,666.66, with the first payment due on or before July 31, 2010, and a similar payment to be made on or before the last day of each month thereafter through the entire Term of the Lease (the "rent" or sometimes referred to as the "base rent"). Rent for any partial month or partial year during the Term shall be a pro rata portion of the monthly or annual installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other place as Landlord may designate in writing. Rent will commence as of the Commencement Date. The parties acknowledge that the rent payable under this Lease has been established to reflect the savings of below-market rent resulting from Landlord's and Tenant's respective exemption from taxation.

2.2 **Property Use as Rent.** Tenant agrees to offer use of pool and services to Landlord without charge, in the same manner and at a level of use equal to the average annual use of Landlord for the period beginning July 1, 2010 through June 30, 2015.

2.3 **Right to Adjust.** Tenant and Landlord mutually agree that should either party determine that the total value of Lease Payments, as determined by adding the Annual Base Ground Lease

Rents (as described in 2.1), and the value of Property Use Rent (as described in 2.2), is no longer a reliable estimate of a reasonable lease rate, Tenant and Landlord shall negotiate a revised lease rate as provided in Section 1.3 of this agreement.

2.4 **Additional Rent, No Offsets.** All payments required to be paid by Tenant under this Lease, other than base rent, will constitute additional rent. All rent (including base and additional rent) shall be received by Landlord without set-off, offset, abatement, or deduction of any kind.

2.5 **Net Lease.** The rental paid by Tenant shall be a fully net (sometimes referred to as "triple net" or "absolute net") return to Landlord, so that from and after the Commencement Date, this Lease shall yield the base rent to Landlord net of all operating costs, maintenance and repair costs, taxes, insurance charges, assessments, governmental charges, utility costs and fees, and all other expenses of whatever kind or nature pertaining to the operation of the Property. All such costs and expenses accruing after the Commencement Date shall be paid by Tenant as to the Property.

3. **Use of Property**

3.1 **Permitted Use.** Tenant shall use the Property primarily for the purpose of maintaining a community swimming pool thereon and for other related community recreation projects, including the Canby Adult Center, but for no other purposes. Tenant shall not cause or permit candy or other food products to be sold on the pool premises to school children during school hours; and Tenant shall not allow school aged children to smoke or loiter on the Property and will cooperate with Landlord or its agents in controlling any such activities. If Tenant proposes to change the use of the property, Tenant will not do so without first obtaining the prior consent of Landlord to such change in use, which consent may be withheld in Landlord's sole discretion.

3.2 **Parking Overflow.** Tenant may utilize the parking lot of Landlord's district office/Ackerman building when necessary to accommodate overflow parking from Tenant's use of the property after hours, on non-school days, and at other times when such use would not interfere with Landlord's school day parking needs.

3.3 **Compliance with Legal Requirements.** In connection with its use, Tenant shall keep and maintain the Property in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction, and other recorded covenants, conditions and restrictions affecting the Property (collectively, the "Legal Requirements").

3.4 **Nondisturbance.** The rights of Tenant to the Property shall not be disturbed, cancelled, terminated or otherwise interfered with by Landlord during the Term of this Lease.

3.5 **Hazardous Substances.** Landlord represents and warrants that, as of the date of this Lease, and to the best of Landlord's knowledge, no hazardous substances have been generated, released, stored or deposited over, beneath, or on the Property from any source whatsoever by Landlord, its agents, independent contractors or invitees, other than Permitted Products (as defined below).

Tenant (as to the Property, during the Term) and Landlord (as to any adjoining property owned or operated by it, if any), have not, and shall not, allow or permit any Hazardous Substances to be generated, released, used, stored or deposited on or in the Property or adjoining property, except in the ordinary course of maintaining and operating such property and in strict compliance with applicable Environmental Laws (as defined below).

Tenant will indemnify, hold harmless, and defend Landlord, and its successors and assigns, from any and all claims, losses, damages, response costs and expenses arising out of or in any way relating to the presence of hazardous substances in, on, or beneath the Property that first occurred or accrued from and after the date of turnover of possession of the Property to Tenant, whether caused by Tenant or third parties.

The term "hazardous substances" is used in its very broadest sense, and refers to materials which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of, or otherwise managed. The term shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Property is located under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Federal Water Pollution Control Act (FWPCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Clean Air Act (CAA) and any and all other federal, state and local statutes or ordinances applicable to the protection of human health or the environment (the "Environmental Laws"). However, the foregoing requirements and limitations will not apply to products such as landscape fertilizer, cleaning and other products and materials that are in ordinary quantities and customarily used in the cleaning, maintenance and operation of residential and commercial facilities (the "Permitted Products"), but each party will in any event cause any Permitted Products to be held or used in accordance with all applicable Environmental Laws.

4. **Maintenance; Taxes; Utilities**

4.1 **Maintenance.** Tenant will be responsible for maintaining the Property in good order, condition repair, operating condition, working order and appearance, and in accordance with all applicable Legal Requirements and Environmental Laws, including (without limitation) those requiring any structural or nonstructural alteration of the

Property (subject to any requirement of Tenant to obtain Landlord's consent herein) including, without limitation, all landscaping, buildings, driveways, parking lots, fences and signs located in the Property and all sidewalks and parkways adjacent to the Property.

4.2 **Taxes and Assessments.** Tenant shall pay (or cause to be paid) any property taxes, assessment and public charges ("taxes") on the land, and on the improvements thereon, subject to the provisions of this Lease.

4.3 **Tenant's Election to Contest.** Tenant may withhold payment of any tax or assessment on the Property if a good faith dispute exists as to the obligation to pay, so long as Landlord's property interest is not jeopardized. If the Property is subjected to a lien as a result of nonpayment, Tenant shall provide Landlord with assurances reasonably acceptable to Landlord that Tenant can and will satisfy the lien before enforcement against the Property.

4.4 **Utilities.** Tenant will be responsible for causing to be paid all charges for services and utilities incurred in connection with the use, occupancy and operation of the Property, including (without limitation) charges for electricity, gas, telephone service, water and sewer.

5. **Liens and Indemnification**

5.1 **Liens.** Tenant shall pay (or caused to be paid) as due all claims for work done on or for services rendered or material furnished to the Property, and shall keep the Property free from any liens which could result in foreclosure of Landlord's or Tenant's interest in the Property, except for financing by Tenant on its leasehold estate (which will bind Tenant's interest but not constitute a lien against Landlord's fee title). If Tenant fails to pay such claim or to discharge any lien Landlord may elect (in its discretion) to do so after at least ten (10) days' written notice to Tenant of Landlord's intention to do so, and in that event, Landlord may collect back from Tenant the amount so paid, as additional rent. Amounts paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraph 10.4 below. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

5.2 **Indemnification.** Tenant (the "**Indemnitor**") shall indemnify the Landlord (the "**Indemnitee**") from any loss, liability, claim of liability or expense (including reasonable attorneys' fees and litigation expenses) arising out of or related to the Property or Building and arising out of or related to (i) any violation of law by the Indemnitor or its owners, agents, independent contractors, invitees, trespassers and employees (the "**Covered Persons**"), (ii) for any loss, injury or damage to Tenant or to any other person, or to its or their property, caused upon or about the Property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts of Landlord, or (iii) any negligent action or inaction of the Indemnitor or its Covered Persons. Further, Landlord shall not be liable: (i) for

any damage caused by other persons in, upon or about the Property, or caused by operations in construction of any work on the Property; or (ii) in any event for consequential damages, including lost profits of Tenant or any person claiming through or under Tenant. The provisions of this section shall survive the expiration or earlier termination of this Lease.

5.3 **Disclaimer of Landlord's Responsibilities.** Landlord shall not under any circumstances be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Tenant, and no construction lien or other lien for such work, labor or services or material furnished shall attach to or affect the reversionary interest of Landlord in any building(s) or any construction, alteration, repair, or improvement erected or made by Tenant on the Property. Nothing contained in this Lease shall be deemed or construed in any way as constituting the request of consent of Landlord, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific construction, alteration, repair or improvement to or on the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials on behalf of Landlord that would give rise to the filing of any lien against Landlord's interest in the Property.

6. **Insurance; Restoration of Damage**

6.1 **Liability Insurance.** Tenant (as to the Property, during the Term) shall continuously maintain, at its expense, commercial general liability ("CGL") insurance with a combined single limit initially of \$2,000,000, or such greater amount approved by the parties as may from time to time customarily be furnished by tenants under comparable leases. Tenant shall name the Landlord as an additional insured, and the liability insurance will otherwise comply with paragraph 6.2 below.

6.2 **Form of Insurance.** All policies may be part of blanket coverage relating to properties owned or leased by Tenant. Tenant will deliver to Landlord certificates of such insurance coverage prior to or concurrent with Tenant's obtaining possession of the Property and thereafter, as to policy renewals, Tenant will deliver to Landlord certificates of coverage (or other confirmation of arrangements for coverage) within 15 days prior to the expiration of the term of each such policy. Tenant's insurance shall name Landlord as an additional insured. All of Tenant's insurance shall provide for thirty (30) days' written notice to Landlord prior to cancellation, non-renewal or material modification.

7. **Condemnation**

If the entire Property is condemned, or if a portion is taken which causes the remainder to be reasonably unusable for the use permitted hereunder, then this Lease shall terminate as of the date upon which possession of the Property is taken by the

condemning authority. The net condemnation proceeds shall be divided between Landlord and Tenant in proportion to the value of their respective interests in the Property immediately prior to the taking. If only a portion of the Property is taken and this Lease is not terminated, then (i) Tenant shall use the condemnation proceeds to make necessary repairs and alterations to the Property to permit Tenant to continue its operations thereon, and (ii) the remaining balance, if any, of the condemnation award attributable to the Property and Building shall be divided between Landlord and Tenant in proportion to the value of their respective interests in the Property immediately prior to the taking.

Tenant will be entitled to retain any award specifically made to Tenant for interruption of business, moving expenses, or the taking of Tenant's improvements, equipment or fixtures. Landlord will be entitled to any award specifically made to Landlord as severance damages for the effect of any taking on any adjoining property owned by Landlord that is not part of the Property under this Lease.

In the event of condemnation, rent shall be abated during the period of restoration, and shall be reduced for the remainder of the lease Term to the extent and in the same proportion as the reduction in the fair market rental value of the Property caused by the Propeliy. Sale of all or a part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation.

8. **Transfers by Tenant.**

8.1 **Transfers Prohibited Without Consent.** Tenant shall not assign, pledge, hypothecate, encumber or otherwise transfer its leasehold interest and interest in the improvements on the Property without the written consent of Landlord, which consent may be withheld in Landlord's sole discretion. An unauthorized transfer under this section shall be deemed a default of this Lease and entitle Landlord to terminate this Lease.

9. **Events of Default**

The following shall be "Events of Default":

9.1 **Unauthorized Transfer.** Tenant's assignment, pledge, sublease, encumbrance or other transfer of Tenant's leasehold interest or the building on the Property without the prior written consent of Landlord.

9.2 **Payment Default.** Failure of Tenant to make any rent or other payment to be made to Landlord under this Lease within 20 days after receipt of written notice of nonpayment.

9.3 **Default in Other Covenants.** Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within 30 days after written notice by Landlord specifying the nature of the default with reasonable
Ground Lease

particularity. If the default is of such a nature that it cannot be remedied fully within the 30-day period, this requirement shall be satisfied if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

9.4 **Notice of Action to Retake or File Suit.** Prior to taking any action to re-enter or retake possession of the Property, or to sue Tenant for damages for default, Landlord will provide Tenant with at least ten days' notice of Landlord's intent to pursue the particular remedy or remedies if the default is not cured within such time period. Such notice may be given concurrently with or separately from the notices specified above.

10. **Remedies on Default**

Upon default, after expiration of notice and cure periods provided in Section 9, Landlord may exercise any one or more of the following remedies:

10.1 **Termination.** In the event of a default the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Property and remove any persons or personal property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

10.2 **Re-letting.** Following reentry or abandonment, Landlord may re-let the property and in that connection may make any suitable alterations or refurbish the Property, or both, or change the character or use of the Property, but Landlord shall not be required to re-let for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Property or to any tenant that Landlord may reasonably consider objectionable. Landlord may re-let all or part of the Property, alone or in conjunction with other properties for a term longer or shorter than the term of this lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

10.3 **Damages for Default.** Landlord may recover all damages caused by the default. Landlord may sue periodically to recover damages as they accrue during the remainder of the lease term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the reasonable rental value of the Property for the remainder of the term, discounted to the time of judgment at the rate of 9 percent per annum.

10.4 **Cure of Tenant's Default.** Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The reasonable cost of performance, including reasonable attorneys'

fees and all disbursements, shall immediately be repaid by Tenant upon demand, together with interest from the date of expenditure until full paid at the rate of 12 percent per annum, but not in any event at a rate greater than the maximum rate of interest permitted by law.

10.5 **Other Remedies.** Landlord may exercise any other remedy available under applicable law. Landlord may terminate this Lease and take possession of the Property, and Landlord may pursue any other legal remedy for breach of contract, including (without limitation) specific performance, collection of damages, and collection of attorneys' fees and other costs and expenses.

11. **General Provisions**

11.1 **Modifications.** This Lease may not be modified except by endorsement in writing attached to this Lease, dated and signed by the parties. Neither party shall not be bound by any statement of any agent or employee modifying this Lease, except for any person which the party has specifically designated in writing as its representative.

11.2 **Proration of Rent.** If this Lease starts or ends during a rental period, the rent (including taxes and any other charges) shall be prorated as of such date. Upon termination, other than for default, prepaid rent shall be refunded, if applicable.

11.3 **Nonwaiver.** Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

11.4 **Succession.** Subject to the limitations on transfer of Tenant's interest, this Lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns.

11.5 **Entry by Landlord.** Except as otherwise provided herein, Landlord or its authorized representatives may enter the Property at any time without any restrictions from Tenant; however, Landlord or its authorized representatives may enter any building or improvement constructed on the Property under Tenant's exclusive control only upon 24 hours' notice to Tenant.

11.6 **Estoppel Certificates.** Within 10 days after receipt of written request, each party shall deliver a written statement to the requesting party stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested.

11.7 **Surrender of Premises; Demolition.** Upon the termination of this Lease, for any reason whatsoever, Tenant shall promptly vacate the property and deliver the same to Landlord in as good order and repair as said Property was at the

commencement of this Lease, ordinary wear and tear accepted. Notwithstanding the foregoing, upon termination of this Lease and vacation of the Property by Tenant, Tenant shall cause the demolition and removal of the swimming pool improvement on the property, and the re-gradng of the property as necessary, prior to Tenant's surrender of the Property to Landlord. Except as provided above, all additions to or alterations of the Property, whether installed by Landlord or By Tenant, excluding any trade fixtures, shall at once become part of the realty and belong to Landlord. Tenant agrees to restore any damage caused by the removal of any property Tenant is entitled to remove, pursuant to this Section.

11.8 **Notices.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given (collectively "Notices") shall be given in writing and effective upon receipt. Notices may be served: by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed Notices shall be deemed received three business days after mailing, properly addressed. Couriered Notices shall be deemed received when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. With respect to any notice sent by telex, facsimile or other telecommunication device, the term "receipt" will mean electronic verification that transmission to the recipient was completed, if such transmission occurs during the normal business hours, or otherwise on the next business day after the date of transmission. Personal delivery of Notices shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, Notices shall be delivered to the parties at the following addresses:

If to Tenant, to it at:

City of Canby, an Oregon municipal Corporation
PO Box 930
Canby, OR 97013

If to Landlord, to it at:

Canby School District No. 86
1130 South Ivy Street
Canby, OR 97013

From time to time any party may designate a new address for purposes of Notices hereunder by Notice to the other party. Delivery of the copy of any notice to the places to which copies are to be sent is not a precondition to the effectiveness of the notice as to the parties to this Lease. As used in this Lease, the term "business day" means a day, other than Saturday or Sunday and national holidays, on which banking institutions in Portland,

Oregon are generally open for business to the public, and "normal business hours" means 9:00 a.m. to 5:00 p.m. on any such business day.

11.9 **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Lease, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, upon appeal and on any petition for review, in addition to all other sums provided by law.

11.10 **Relationship of Parties.** The relationship of the parties to this Lease is that of landlord and tenant. Landlord is not a partner or joint venture with Tenant in any respect or for any purpose in the conduct of Tenant's business or otherwise.

11.11 **Applicable Law.** The Property is located in the State of Oregon. The parties agree that the law of such State shall be applicable for purposes of construing and determining the validity of this Lease.

11.12 **Prior Agreements.** This Lease (including all exhibits, incorporated herein) is the entire, final, and complete agreement of the parties with respect to the matters set forth in this Lease, and supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters.

11.13 **Validity of Provisions.** If any of the provisions contained in this Lease shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Lease shall not be affected.

11.14 **Recording; Quitclaim.** Tenant shall not file or record this Lease without the specific prior written consent of Landlord, but the parties may execute a good and sufficient memorandum of lease for purposes of recording in a form acceptable to Landlord. Upon expiration or earlier termination of this Lease, Tenant shall promptly execute, acknowledge and deliver to Landlord any quitclaim deed or other document required by Landlord or a title company to remove the cloud of this Lease from the Property and to evidence the termination of Tenant's interests in the Property and improvements that will remain on the Property.

11.15 **Merger of Estates.** In the event and at such time as Landlord may own and hold both the landlord's and tenant's interest under this Lease, this Lease will terminate automatically by merger of estates.

11.16 **Authorization of Lease; Facsimile Signatures.** Each party covenants and warrants to the other that the person(s) executing this Lease on behalf of the party is duly authorized to execute and bind the party under this Lease. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties shall

confirm facsimile-transmitted signatures by signing an original document.

11.17 **Brokers.** Neither party has used a real estate broker in connection with this transaction. Each party will defend, indemnify, and hold harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

11.18 **Section Headings.** The headings to the sections and paragraphs of this Lease are included only for the convenience of the parties and shall not have the effect of enlarging, diminishing, or affecting the interpretation of its terms.

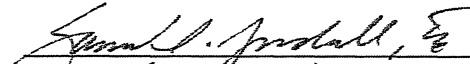
11.19 **Joinder in Instruments.** Upon reasonable request from time to time, Landlord shall join with Tenant in any conveyance, dedication, grant of easement or license or other instrument as shall be reasonably necessary or convenient to provide public utility service to the Property or in order to allow development or use of the Property by Tenant. Landlord shall not be required to incur any cost or expense by virtue of the provision of this paragraph.

11.20 **Exhibits.** All exhibits and attachments to the Lease are hereby incorporated as part of the body of this instrument.

IN WITNESS WHEREOF, the undersigned has caused this Ground Lease to be duly executed under seal by an officer thereunto duly authorized as of the date and year first above written.

LANDLORD:

CANBY SCHOOL DISTRICT NO.86


Date: August 11, 2016
Name: Samuel Goodall
Title: Superintendent

TENANT:
corporation

CITY OF CANBY, an Oregon municipal



Date: August 3, 2016
Name: Brian Hodson
Title: Mayor

EXHIBIT "A"

DESCRIPTION OF PROPERTY

A Parcel of land located in the Northeast one-quarter of Section 4, Township 4 South, Range 1 East of the Willamette Meridian, in the City of Canby, Clackamas County, Oregon. Said parcel of land being more particularly described as follows:

Commencing at the intersection of the Northerly line of that Tract of land dedicated for road purposes in that Deed recorded as Document No. 97-023967, Clackamas County Deed Records, with the East right-of-way line of South Ivy Street, said point being North 89°16'09" West a distance of 1259.47 feet and North 00°31'13" East a distance of 67.35 feet from the East one-quarter corner of said Section 4, said intersection point being the true point of beginning of the Parcel of land herein described; thence North 00°31'13" East, along said East right-of-way line, a distance of 484.94 feet to a point; thence South 89°33'00" East a distance of 220.19 feet to a point; thence South 00°50'30" West a distance of 513.36 feet to a point on said North line of said Document No. 97-023967 Tract; thence North 89°16'09" West, along said North line, a distance of 190.17 feet to an angle point in said North line; thence continuing along said North line, North 44°09'45" West a distance of 38.60 feet to the true point of beginning of the Parcel of land herein described.

Said Parcel of land contains an area of 2.5668 acres more or less.

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 18th day of January, 2023 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1593 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

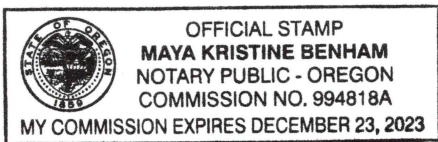
Thereafter, on the 19th day of January, 2023, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

- 1. Canby Civic Building
- 2. Canby Post Office
- 3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of more than five (5) days and until the very 1st day of February, 2023.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 19th day of January, 2023.



Maya K Benham
Notary Public for Oregon
My Commission Expires: 12/23/2023