

## JOINT USE AGREEMENT

This Joint Use Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **TOWN OF HUNTERSVILLE**, a North Carolina Municipal Corporation (“hereinafter “Town”), and **LAKE NORMAN CHARTER SCHOOL, INC.**, a North Carolina Non-Profit Corporation (hereinafter “LNCS”).

**WHEREAS**, the Town and LNCS entered into a Lease and Operating Agreement (“Lease”) dated December 17, 2004, wherein LNCS was seeking to acquire property for a new school, and the parties agreed to cooperate in the design, construction, operation and use of a gymnasium. The term of the Lease is ten (10) years as of the date of delivery, with an option to renew and extend the term for a period of ten (10) additional years. The subject gymnasium is referred to herein as the “Middle School Gym”; and

**WHEREAS**, the Town and LNCS entered into a Lake Norman Charter School Joint Use Agreement (“LNCS Joint Use Agreement”) dated January 5, 2009, wherein LNCS intended to construct a new high school facility with a gymnasium, and the parties agreed upon the design, construction, operation and use of the gymnasium. The term of the LNCS Joint Use Agreement is until October 31, 2019, and any extension shall be subject to negotiation. The subject gymnasium is referred to herein as the “High School Gym”; and

**WHEREAS**, LNCS has acquired property for a new Elementary School located on Hambright Road in Huntersville, North Carolina, and intends to construct a facility with a gymnasium and playing fields, and the parties desire to agree upon the design, construction, operation and use of the gymnasium. The subject gymnasium is referred to herein as the “Elementary School Gym”; and

**WHEREAS**, the parties hereto wish to enter into this Agreement to (1) set forth the terms and conditions of the joint use of the Elementary School Gym, and (2) merge the Lease and LNCS Joint Use Agreement into this Agreement. All subject gymnasiums are referred collectively to herein as the “Gymnasiums”.

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**Therefore**, for the recited considerations, the parties agree as follows:

1. **Design.** LNCS will design the Elementary School Gym, which will include certain reserved, secured space for Town’s exclusive use consistent with the space reserved for the Town at the Middle School Gym and the High School Gym. The Elementary School Gym will accommodate at a minimum an 84’x50’ basketball court and seating for 300 spectators. The Town shall have the right to review and approve the design plans for the Elementary School Gym. The Town’s approval may not be unreasonably withheld and will be deemed given unless the Town provides reasonable and specific objections to the design plans within 14 days of receipt.

2. **Construction.** LNCS shall be responsible for constructing the Elementary School Gym.
3. **Contribution.** Town shall make a one-time lump sum payment toward the construction cost of the Elementary School Gym in the amount of \$500,000. This payment shall be made directly to LNCS, and shall be due within 30 days of LNCS's receipt of a Certificate of Occupancy but no earlier than July 1, 2018. The Town acknowledges that the contribution made through this agreement does not give them ownership rights to gymnasiums or other LNC property.
4. **Upgrades.** If Town requests any additional upgrades to the Elementary School Gym in addition to the approved plans, and LNCS agrees to such upgrades, Town shall be responsible for payment to LNCS for the additional upgrades.
5. **Termination and Replacement of the Lease and LNCS Joint Use Agreement.** Upon payment of the amount due as set forth above, the Lease and LNCS Joint Use Agreement shall be deemed terminated, and the parties' joint use of the Middle School Gym and High School Gym shall be governed by this Agreement.
6. **Joint Use.**
  - a. LNCS and Town shall jointly use the Gymnasiums. LNCS shall have exclusive use as needed (i) during school operating hours until 6:00 p.m., as that term is defined by LNCS, and (ii) during certain other days, evenings and weekends as needed for at dates and times reasonably determined by LNCS ("Reserved Hours"). Notwithstanding, Town may use the Gymnasiums for public purposes for the operation of recreation and athletic activities, which will mainly be held during weekend hours, and week day evening hours beginning at 6:00 p.m. that are not in conflict with school operating hours or Reserved Hours. Use of the Gymnasiums are subject to the provisions herein, and shall be coordinated together with the provision of paragraph 7 below.
  - b. The Town shall not use the Gymnasiums, or any of them, at any time for a purpose that would be deemed a "Private Business Use" as that term is defined in the Arbitrage and Tax Regulatory Agreement among the LNCS, the North Carolina Capital Facilities Finance Agency and Branch Banking & Trust Company dated as of May 16, 2008, or for any other purpose which may cause the interest on the North Carolina Capital Facilities Finance Agency Tax-Exempt Variable Rate Educational Facilities Revenue Bonds (Lake Norman Charter School), Series 2008A and 2008B to be included in the gross income of the Holders thereof or any other future tax exempt financing that LNC may issue in the future.

- c. LNCS shall be allowed to reserve and use the Town's Athletic Fields and Tennis Courts (including but not limited to three (3) Lacrosse practice fields in the spring; two (2) football practice fields in the fall; two (2) soccer practice fields in the fall and spring; two (2) baseball practice fields in the spring; two (2) softball practice fields in the spring; three (3) tennis courts in the fall and spring; two (2) baseball game fields in the spring; and two (2) softball game fields in the spring) during mutually agreed upon times and days reasonably determined by Town. LNCS shall enjoy the same usage of these Town facilities as it has experienced during the calendar year of 2016 as noted above, and the town shall maintain that level of usage. Use of said Town facilities are subject to the provisions herein, and shall be coordinated together with the provision of paragraph 7 below.
  - d. The Town shall continue to have access to the Middle School's community room at mutually agreed upon times outside regular school hours.
7. **Scheduling.** Subject to the other terms of this Agreement, the Town shall be responsible for coordinating the scheduling of the Gymnasiums in cooperation with LNCS. LNCS shall provide the Town of Huntersville, Parks and Recreation Department Director, or designee, no later than July 1 annually, a schedule of school operating hours and Reserved Hours. Within thirty (30) days thereafter, Town will provide LNCS a schedule of dates and times it intends to operate programs on the premises. These procedures shall not preclude either party from requesting additional time, either within the LNCS school hours or Reserved Hours, or within those times designated by the Town, and each party will work in good faith to accommodate the other. LNCS shall make its field and court request to Town semi-annually in the fall and spring. Additional details as to scheduling and other operational policies and procedures are to be established by the parties in a Memorandum of Understanding described in Section 8 hereof.

Notwithstanding, if LNCS should schedule school hours and Reserve Hours to the extent that Town is unable to reasonably utilize a certain LNCS gymnasium during Town's normal and customary recreation usage throughout the year, then Town shall be given additional usage of another LNCS gymnasium so no shortages in usage occurs. For purposes of usage, a year shall be deemed to begin on August 1 and end on the ensuing July 31. Exclusive rights over outside third party users shall be subject to Town's use.

8. **Rules and Regulation; Memorandum of Understanding.** The parties shall have the right to establish, modify, publish and enforce reasonable and uniform rules and regulations applicable to the use of the gymnasiums, grounds, Athletic Fields and Tennis Court, consistent with each other's use of said premises and grounds. Each party agrees to comply with such rules, regulations, policies and procedures, and to use its best efforts to cause its employees, agents, guest and invitees to comply. Such rules and regulations, in addition to scheduling and other operational policies and procedures to be established by the parties, shall be documented in a separate, annual Memorandum of Understanding, as the same may be modified from time to time, and which Memorandum of

Understanding can be incorporated as a single Memorandum of Understanding in connection with usage of all facilities referenced herein. The annual Memorandum of Understanding need only be approved by the Superintendent of LNCS, or designee, and the Town's Parks and Recreation Department Director, or designee. The Memorandum of Understanding shall include provisions relating to the requirement that each party shall have a responsible employee present during all times that it is using the other party's property and/or facility.

9. **Maintenance.** LNCS shall pay and be responsible for all costs of operation, utilities, security and routine maintenance, including but not limited to janitorial service of the Middle School Gym, High School Gym and Elementary School Gym, excepting such repairs as would be the Town's responsibility pursuant to Section 10. Town shall pay and be responsible for all costs of operation, utilities, security and routine maintenance, including but not limited to janitorial service of its Athletic Fields and Tennis Courts, excepting such repairs as would be the LNCS's responsibility pursuant to Section 10.
10. **Indemnity; Insurance.** To the extent permitted by law, LNCS and Town shall each defend, indemnify and save harmless the other party and its employees, agents and officers, and elected officials from and against any and all losses, claims, suits, damages or expenses, including but not limited to reasonable attorney's fees arising out of or in any manner connected with the indemnitor's occupancy, use or operation of the premises, excepting however, losses, damages, suits, claims or expenses caused by the sole negligence of the indemnitee, its officers, agents, elected officials, or employees. Each of the parties hereto shall at its expense secure and maintain in full force and effect during the term hereof, a policy of automobile bodily injury and property damage liability insurance covering owned, non-owned and hired vehicles for an amount not less than One Million Dollars (\$1,000,000.00), combined single limits, a policy of comprehensive general insurance for bodily injury and property damage in the amount not less than One Million Dollars (\$1,000,000.00), combined single limits; and a policy of workers compensation insurance with applicable statutory limits. In lieu of the policies required hereunder, each party may elect to provide the equivalent insurance under a self-insurance program reasonably acceptable to the other party. All policies of insurance (including participation certificates in a self-insurance program) shall provide that the same shall not be canceled or materially altered until a ten (10) day written notice of cancellation, material change or non-renewal has been served upon the other party.
11. **Damage.** LNCS shall be solely responsible for obtaining all property damage insurance on the property to provide for rebuilding of the property in the event of damage by fire or other casualty. In the event of such property damage so that the Elementary School Gym, or Gymnasiums, become untenable, and the LNCS elects to rebuild the premises, this Agreement shall remain in force and effect but shall be extended for a period of time equal to that time that the premises was unusable. If, however, a premises become damaged or destroyed by fire or other casualty and LNCS elects not to rebuild, then this

Agreement shall terminate for that particular premise, and Town shall be refunded a proportionate part of its initial contribution to its construction of the Elementary School Gym based upon the years remaining under this Agreement.

12. **Town Space.** LNCS shall provide, within the Gymnasiums, an area for the exclusive use of Town, such as for storing of any non-hazardous fixtures, equipment or supplies. Town shall be responsible for the maintenance of that area in addition to its other responsibilities hereunder. Upon termination of this Agreement, Town shall promptly remove its equipment, supplies and fixtures from these areas.
13. **Default.** If either party shall default in any of its obligations hereunder, and if that default is not remedied within thirty (30) days after written notice by the other, or if such default cannot be remedied with that period or is not diligently pursued within that time period, the non-defaulting party shall have all remedies available to it in law and in equity, including the right to terminate the Agreement. In the event that the Agreement is terminated, Town shall be entitled to a refund of a proportionate portion of the initial contribution, based upon the unused time remaining under the terms of the Agreement.
14. **Term.** This Agreement shall be for a term beginning upon the completion and availability of the Elementary School Gym (anticipated date being August 2018), and ending twenty years after (anticipated date ending July 31, 2038), provided that if the Elementary School Gym is not available for usage by August 1, 2018, then the termination date shall be extended by the number of months of delayed availability. Any extension beyond the termination date shall be subject to negotiation by the parties.
15. **Notices.** Any and all notices are to be given under this Agreement or otherwise may be served by enclosing the same in a sealed envelope addressed to the party intended to receive the same as registered or certified mail with postage prepaid, or by hand delivery, or overnight mail by nationally known carrier, as follows:  
  

TOWN:           Town of Huntersville  
                  Attn: Park and Recreation Director  
                  Post Office Box 664  
                  Huntersville, North Carolina 28070

LNCS:           Lake Norman Charter School  
                  Attn: Superintendent  
                  12435 Old Statesville Road  
                  Huntersville, North Carolina
16. **Amendments.** This Agreement may be amended only by written instrument executed by the parties hereto.

17. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina, and the sole venue for any action brought in connection herewith shall be brought in a State or Federal court sitting in Mecklenburg County, North Carolina.
18. **Entire Agreement.** The entire agreement between LNCS and Town concerning the Gymnasiums, fields and tennis courts, including the combined termination date for all three (3) Gymnasiums is contained in the provisions of this Agreement. Any stipulation, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Agreement shall have no legal or equitable effect or consequences unless reduced in writing herein or in other such written agreements.
19. **Consent.** Wells Fargo Bank, National Association (“Bank”), is named as Beneficiary of the Third Amended and Restated Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement (Secures Future Advances) (the “Deed of Trust”), dated July 7, 2016, which is of record in the Register of Deeds, Mecklenburg County, North Carolina in Deed Book 30978, at Page 251. As a condition of this Agreement, LNCS will obtain and provide to Town Bank’s consent to this Agreement as required in Paragraph 11 of the Deed of Trust.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed in duplicate, by authority duly given with all the formality required by law as of the date here first above written.

**TOWN OF HUNTERSVILLE**

ATTEST:

By: \_\_\_\_\_  
John Aneralla, Mayor

\_\_\_\_\_  
Janet Pierson, Town Clerk

(SEAL)

Approved as to Form

This instrument has been pre-audited in the manner required by the Local Government Fiscal Control Act

\_\_\_\_\_  
Robert B. Blythe, Town Attorney

\_\_\_\_\_  
Jackie Huffman, Finance Director

**LAKE NORMAN CHARTER SCHOOL,  
INC.**

By: \_\_\_\_\_  
Shannon Stein, Superintendent