

## AMENDMENT TO FACILITY USE AGREEMENT

THIS AMENDMENT TO AGREEMENT, made and entered into on this \_\_\_\_\_ day of September, 2005, by and between the City of Overland Park, Kansas, a municipal corporation, hereinafter referred to as “City,” and Johnson County Kansas hereinafter referred to as the “User,” is an amendment to the Facility Use Agreement previously entered into by the parties a copy of which is attached hereto for reference purposes as Exhibit “A.”

WHEREAS, the Facility Use Agreement between the parties provides at Paragraph 2.0 for the Term of Use, and

WHEREAS, the User has requested and the City has agreed to extend the Term of Use; and,

WHEREAS, the parties mutually desire to amend Paragraph 2.0 titled “Term of Use” to reflect that agreement.

NOW THEREFORE, in consideration of the promises and covenants of this Amendment to Agreement the sufficiency of which his hereby acknowledged, the parties hereto agree as follows:

1. That Paragraph 2.0 of the Facility Use Agreement shall be amended to read:

### **2.0 Term of Use**

2.1 User shall be permitted to use the specified area from October 1, 2003 until December 31, 2005. The term of this agreement will continue month to month thereafter until either party gives the other 30 days notice of termination as provided in Paragraph 2.2 below.

2.2 This Agreement may be terminated by either party, giving at least 30 days prior written notice to the other party of its intention to terminate this Agreement.

2. That the existing language of all other paragraphs and portions of the Facility Use Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Facility Use Agreement on the day and year first above written.

JOHNSON COUNTY, KANSAS

CITY OF OVERLAND PARK,  
KANSAS

By \_\_\_\_\_

By \_\_\_\_\_  
Carl Gerlach, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
Tammy M. Owens  
Senior Assistant City Attorney

# **EXHIBIT A**

## **FACILITY USE AGREEMENT**

This Facility Use Agreement (the "Agreement") is made by and between the City of Overland Park, Kansas (the "City") and Johnson County, Kansas ( the "User") for the times and dates indicated therein.

### **1.0 Grant of License**

The purpose of this Agreement is to provide space at the Center and to define responsibilities for the operation, finances, building maintenance, and other matters pertaining to the User's use and occupancy of the Center. Subject to the terms and conditions of this Agreement and in consideration of payment of the fees and performance of other obligations set forth herein, the City hereby grants to User a license to use that portion of the former Tomahawk Ridge Elementary School that is now part of the Tomahawk Ridge Community Center, (the "Center") at 11902 Lowell Avenue, Overland Park, Kansas 66213 as described and shown on the attached Exhibit A - Floor Plan. This license is further subject to User's compliance with all requirements and policies of the City set forth in this Agreement or established written City policies.

### **2.0 Term of Use**

2.1 User shall be permitted to use the specified area from October 1, 2003 until September 30, 2005.

2.2 Time shall be of the essence for this Agreement, and the period of time granted shall not be extended for occupancy or use of the Center without written permission from the City. No extension of the occupancy or use is presently contemplated and no expectation of such an extension is hereby created.

2.3 This Agreement may be terminated by either party, giving at least 90 days' prior written notice to the other party of its intention to terminate this Agreement; further provided that if the City or User shall fail or refuse to perform or comply with any of the obligations or provisions herein agreed, the affected party shall have the right to notify the other party in writing of such default; and if the party so notified shall remain in default for 30 days thereafter, the affected party may elect to cancel this Agreement immediately thereafter.

### **3.0 Use Fee**

User shall pay a fee in the amount of \$2,214.87 per month, which shall be received by the City on or prior to the first day of the month. Except as may be otherwise provided herein, the User shall provide all funding and personnel necessary to manage their occupied portion of the Center, conduct and supervise the programs they provide at the Center, and coordinate their activities with the other users of the Center.

### **4.0 Compliance with Laws**

User shall comply with all applicable laws, ordinances and rules of City, Johnson County, the State of Kansas and the United States. User shall pay all taxes, if any, imposed by law in connection with its use and occupancy of the Center.

## **5.0 Advertising and Selling**

5.1 No advertising or other item shall be placed or posted on walls or doors in or about the Center without the prior written permission of the City's authorized agent. Displays and exhibits may be permitted where appropriate and consistent with City policy. The City's name or logo shall not be used to suggest co-sponsorship or endorsement of any activity, except with the prior written approval by the City's agent.

5.2 User shall not sell or cause to be sold any items in or about the Center, except on terms and conditions established by the City. Solicitation of donations outside the area occupied by the User is prohibited on the premises of the Center.

## **6.0 Maximum Capacity**

User shall not admit a larger number of persons than can safely and freely move about in the Center. The City shall notify User of the recommended capacity of the Center and the decision of the City's agent concerning questions arising under this paragraph shall be final.

## **7.0 Defacement and Damage**

User shall not injure, mar or in any way deface the Center and shall not cause or permit anything to be done whereby the Center shall be in any manner injured, marred, or defaced. User will not drive or permit to be driven, nails, hooks, tacks, or screws into any part of the Center without permission of the City and will not make or allow to be made any alterations of any kind therein without such prior approval of the City. User is responsible for any costs related to repair of damages caused during usage. The User may not install any fixtures or make any physical changes to the premises and facilities of the Center without the express written consent of the City. Due to the unique nature of their construction and operation it is necessary that the City or its contractor, at the expense of the User, will make any modifications to the interior walls.

## **8.0 Equipment**

User shall not use City's equipment, tools or furnishings, located in or about the Center, without the prior approval of the City's agent. Either the City or the User will own any equipment used by the User. No equipment is to be jointly owned. In the event that this Agreement is terminated, all property shall be returned to the owner agency. All equipment and furnishings of over a Two Hundred Dollar (\$200) value shall be labeled to show owner designation. The maintenance, repair, replacement, and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided in this Agreement

## **9.0 Additional Users**

User understands and agrees that during the term of this Agreement there may be other events taking place in other parts of Center not covered by this Agreement. User shall conduct its activities so as not to interfere with other events.

## **10.0 Parking Facilities**

The City shall make the existing parking facilities at Center available for the vehicular traffic and parking necessitated by User's use of the Center, on a non-exclusive basis.

## **11.0 Violations**

If at any time the use of the Center by User violates the terms and conditions of this Agreement, User shall either cease and desist from continuing such use or shall surrender the Center forthwith upon demand of the City's agent.

## **12.0 Disclaimer of Liability and Indemnification**

The City shall not be liable or obligated to the User for damage incurred to the User upon premises by fire, theft, casualty, acts of God, civil disaster, and such other occurrences and events beyond the control of the City. USER SHALL INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES HARMLESS FROM ANY CLAIM, SUIT, OR PROCEEDING ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, AND USER SHALL INDEMNIFY CITY, ITS OFFICERS AND EMPLOYEES FOR ALL EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) INCURRED IN DEFENDING SUCH CLAIMS. The foregoing indemnity shall not apply to claims resulting from the negligence or intentional acts or omissions off City, its agents and employees.

## **13.0 Insurance**

User agrees to obtain and maintain commercial general liability insurance with limits not less than \$500,000.00 each occurrence, \$500,000.00 personal and/or advertising injury and \$500,000.00 general aggregate; and statutory worker's compensation insurance. City shall be named as an additional insured on User's general liability policy. User shall, within 15 days of the time execution of this Agreement, furnish the City with a copy of said insurance policy or a certification that such insurance has been issued.

User and City each waive and release any and all claims, demands or causes of action which either might otherwise have against the other for damages to or loss of property owned by the other located in or upon the premises arising from perils ordinarily insured against under standard fire and extended coverage insurance policies, whether such damage or loss is occasioned by the negligence of User and/or City and their respective agents, servants and employees. Any policy of insurance written to insure the property of either User or City against such perils shall contain a provision, by endorsement or otherwise, whereby the insurance carrier issuing the same shall acknowledge that User and City have so waived and released their right of recovery against the other, and each policy shall waive the right of subrogation which the insurance carrier might have otherwise had against the respective party, all without impairment or invalidation of the insurance contract.

#### **14.0 No Assignment**

User shall not assign or transfer any of its rights under this Agreement without the prior written consent of the City. User herein is an independent contractor and not the agent or employee of the City.

#### **15.0 Smoking and Alcohol Restrictions**

By this Agreement, the City grants to User no greater rights than expressly stated herein and specifically denies any right to User to engage in or allow smoking or the possession, dispensing and consumption of alcoholic beverages within the Center.

#### **16.0 Right to Enter**

In permitting the use of the Center described herein, the City does not relinquish control or custody thereof and does hereby specifically retain the right to enforce any and all laws, rules and regulations applicable thereto. All portions of the Center will at all times be under the ultimate charge and control of the City. The City's agent or other authorized representatives of the City may enter upon the Center at all times to make inspections to ensure compliance with this Agreement.

#### **17.0 Force Majeure**

If performance of any obligation of either party hereunder is prevented or rendered infeasible by act of God, regulation of any public authority, civil disturbance, strike, epidemic, interruption of transportation services, war conditions or emergencies, or other similar or dissimilar causes beyond the control of the obligated party, it is understood and agreed that there shall be no claim for damages against the obligated party for failure to perform the obligations that were so prevented or infeasible.

#### **18.0 Notice**

Any notice to be delivered under this Agreement shall be deemed received on the third day after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the City or User at the address indicated in this Agreement or a written change of notification delivered to the other party.

#### **City Representative:**

City Manager  
City Hall  
8500 Santa Fe Drive  
Overland Park, KS 66212

#### **User Representative:**

Chief  
Johnson County Med-Act  
111 S. Cherry, Suite 300  
Olathe, KS 66061-3441

**19.0 Utilities and Maintenance**

The City agrees to provide heat, light, electricity, and maintenance to include janitorial service and snow removal for the Center. Maintenance shall include repair or replacement of structural, mechanical, and related components of the Center.

**20.0 Additional City and User Commitments**

The User agrees to use the permitted portions of the Center only for the following specific uses and activities, and no other use or activity may take place without the prior written permission of the City. Upon request, the User shall provide a continuously updated approximate listing of times and activities for review by the City.

The City:

- (a) Shall provide 4089 square feet of space for the User as provided on the attached floor plan made a part of this Agreement.
- (b) Shall provide a key to the building for the User.

**21.0 Entirety and Amendment**

This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. All proposals, negotiations, notices, and representations concerning matters covered by this Agreement are merged in this instrument and no amendment or modification hereof shall be valid evidenced in writing and signed by authorized representatives of City and User.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement to be effective as of the day specified herein.

CITY OF OVERLAND PARK, KANSAS

\_\_\_\_\_  
Ed Eilert, Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Bart Budetti  
Sr. Assistant City Attorney



JOHNSON COUNTY KANSAS

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Michael B. Press  
County Manger

ATTEST:

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APPROVED AS TO FORM:

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Cinthia Dunham, County Counsel

# MED ACT

Tomahawk Ridge Elem. Sch. (POD A)

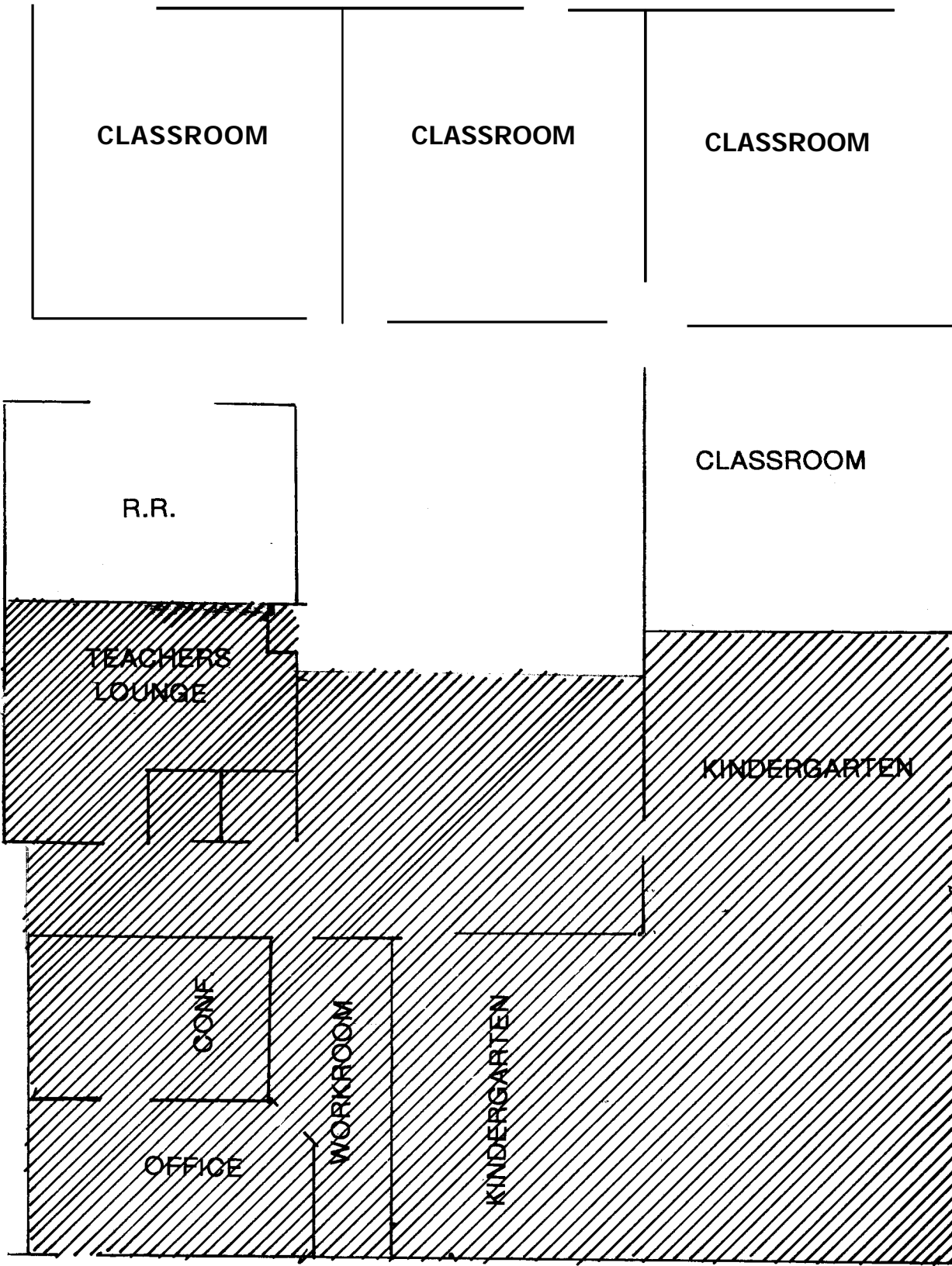


EXHIBIT-A