

Office of School Facilities  
Raul F. Perez, Chief Facilities Design & Construction Officer

**SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO EXECUTE A LEASE AGREEMENT WITH KIPP MIAMI, INC., A FLORIDA NOT FOR PROFIT CORPORATION (“KIPP MIAMI”), FOR KIPP MIAMI’S USE OF CLASSROOM AND ANCILLARY SPACE AT MADISON MIDDLE SCHOOL, FOR THE OPERATION OF A SCHOOL OF HOPE CHARTER SCHOOL**

**COMMITTEE: FACILITIES AND CONSTRUCTION**

**LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

Background

The School Board (“Board”), will be considering at this meeting, authorization to enter into a charter school co-location service agreement with KIPP Miami, Inc. (“KIPP Miami”), to provide localized support and solutions (“Co-Location Service Agreement”). KIPP Miami currently operates a school of hope charter school (“School of Hope”) at the Board-owned Madison Middle School facility, located at 3400 N.W. 87 Street, Miami, Florida 33147 (“School”), under a Temporary Use Agreement between the parties, and KIPP Miami has requested that the parties enter into a long-term lease agreement to allow KIPP Miami to continue utilizing the School for the operation of the Charter School. A School of Hope is a charter school operated by a hope operator which serves students from one or more persistently low-performing schools, is located in the attendance zone of a persistently low-performing school or within a 5-mile radius of such school, whichever is greater, and is a Title I eligible school. KIPP New Jersey, a New Jersey not-for-profit corporation (“KIPP New Jersey”), was designated as a hope operator in 2018 by the Florida Department of Education (“FDOE”). Since FDOE’s approval of KIPP New Jersey as a hope operator extends to non-profit entities operating in Florida pursuant to a Charter Management Organization (“CMO”) Management Agreement, and KIPP New Jersey is the CMO for KIPP Miami, therefore, KIPP Miami will serve as the hope operator and lessee at the School. Moreover, KIPP Miami shall pay rent to the District for use of the School at the rate of \$600 per student, which is the maximum rate allowed under the School of Hope legislation.

Lease Agreement

It is recommended that the Board authorize entering into a Lease Agreement with KIPP Miami, under, substantially, the following terms and conditions:

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- KIPP Miami shall lease a portion of the School consisting of approximately 21,566 square feet of classroom and ancillary building space, and use of playfield, drop-off areas and parking (“Demised Premises”);
- the initial lease term shall commence at 12:01 a.m. on the first day of the month immediately following the Effective Date and end on June 30, 2021;
- the term of the Lease Agreement may be extended, at the sole option of the Board, for four (4) additional periods of one (1) year each, under the same terms and conditions;
- KIPP Miami shall have the right to cancel the Lease Agreement in the event of default by the Board, which default is not cured within the applicable timeframes, and in the event of damage or destruction of the Demised Premises;
- the Board shall have the right to cancel the Lease Agreement in the event of default by KIPP Miami, which default is not cured within the applicable timeframes, and in the event of damage or destruction of the Demised Premises. Waiver of the Board’s right to cancel this Agreement at will is subject to issuance of a formal Waiver by the Superintendent of Schools prior to execution of this Agreement by the Parties;
- KIPP Miami shall pay rent to the Board at the rate of \$600.00 per student, for a total annual amount of \$147,000, based on an enrollment of 245 students. If the Charter School’s enrollment increases or decreases during the term of the Lease Agreement, there will be a corresponding adjustment in the amount of rent;
- the Board shall establish and pay all utility accounts serving the Demised Premises, and provide all routine maintenance and repairs of the Demised Premises;
- KIPP Miami shall be solely responsible for securing and providing its own custodial and janitorial staff and services, including, without limitation, provision of all required supplies, to serve the Demised Premises, at KIPP Miami’s sole cost and expense, with the exception of the School auditorium and cafeteria which will remain the responsibility of the Board;
- KIPP Miami shall accept the Demised Premises in its “as is, where is” condition and basis with all faults as of the effective date of the Lease Agreement, with no representations or warranties by the Board as to the physical condition or usability of the Demised Premises for any specific use or purpose;
- KIPP Miami shall have the right, subject to prior written notice to and approval of the Board or designee, to make certain interior improvements within the Demised Premises, at KIPP Miami’s sole cost and expense;
- KIPP Miami shall surrender the Demised Premises to the Board, at the

expiration, termination or cancellation of the Lease Agreement in as good condition as existed on the effective date of the Lease Agreement, ordinary wear and tear excepted. Any improvements constructed within the Demised Premises pursuant to the Lease Agreement shall be removed and the area restored to the same or better condition as previously existed, at KIPP Miami's sole cost and expense, unless the Board, at its sole option, chooses to keep the improvements;

- in the event of damage or destruction of all or portions of the Demised Premises, other than damage or destruction caused by KIPP Miami, the Board or KIPP Miami may, at their sole option, cancel the Lease Agreement. If neither party elects to cancel the Lease Agreement, the Board, at its sole option, shall either repair or replace the damaged facilities, at the Board's expense, or cancel the Lease Agreement;
- damage or destruction of all or portions of the Demised Premises caused by KIPP Miami, shall be repaired by KIPP Miami at its sole cost and expense;
- KIPP Miami may, if agreed to by the District School Administrator, use any Board-owned furniture, fixtures and equipment located within the Demised Premises as of the Commencement Date of the Lease Agreement, subject to an inventory to be conducted jointly by KIPP Miami and the District School Administrator;
- KIPP Miami shall comply with all local, County, State, School Board or Federal orders currently in place or that may be implemented related to the COVID-19 pandemic ("Emergency Order") at all times during its use of the Demised Premises. In addition, KIPP Miami shall be solely legally responsible and fully liable for compliance with all maintenance requirements and mitigating measures, under any Emergency Order or Board Policy relating thereto, at KIPP Miami's sole cost and expense;
- KIPP Miami shall be responsible for the collection and payment of any taxes, fees or other assessments, including but not limited to sales tax, ad valorem tax, all licenses, permits and other taxes which may be imposed on the Demised Premises or the School, as a result of the leasing, use or occupancy of the Demised Premises by KIPP Miami;
- KIPP Miami shall comply with all School and District safety and security criteria, and shall at all times retain responsibility for providing supervision and security of the Demised Premises;
- KIPP Miami acknowledges and agrees that its use of the Demised Premises shall not unreasonably disrupt nor interfere with any of the District's educational activities or operations at the School, and agrees to work closely with the School Administrator to minimize any impact on District operations;
- KIPP Miami shall indemnify and hold the Board harmless against any liability,

cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons, including death, or damage to tangible property arising out of KIPP Miami acts in connection with its activity under this Lease Agreement or by others on behalf of KIPP Miami, whether or not due to or caused in part by the negligence or other culpability of the Board, excluding only the sole negligence or culpability of the Board;

- in the event of any litigation between the parties under the Lease Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels;
- for purposes of the Lease Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny any and all approvals or waivers under the Lease Agreement relating to operational issues; and
- in addition to the above, the Superintendent of Schools shall also be the party designated by the Board to execute amendments to this Agreement within the authority granted to the Superintendent by the Board and to grant or deny any approvals or waivers required by the Lease Agreement, including authorizing construction within the Demised Premises, placing KIPP Miami in default, and renewing, extending, canceling or terminating the Lease Agreement.

The proposed Lease Agreement has been reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, and found to be in compliance. A copy of the Lease Agreement in its final form is attached hereto as Attachment "1".

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

- 1) execute a lease agreement (“Lease Agreement”) with KIPP Miami, Inc., a Florida not-for-profit corporation (“KIPP Miami”), for KIPP Miami’s use of classroom and ancillary space at Madison Middle School, located at 3400 N.W. 87 Street, Miami, Florida 33147, for the operation of a school of hope charter school, under, substantially, the terms and conditions noted in the agenda item;
- 2) execute amendments to the Lease Agreement within the authority granted to the Superintendent by the Board in the Lease Agreement; and
- 3) grant or deny all approvals or waivers required under the Lease Agreement, including, without limitation, renewing, extending, canceling or terminating the Lease Agreement, authorizing construction within the Demised Premises, and placing KIPP Miami in default, as may be applicable.

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## ATTACHMENT "1"

### LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida (the "**LESSOR**"), and **KIPP MIAMI, INC.**, a Florida not-for-profit corporation (the "**LESSEE**"). The LESSOR and LESSEE are sometimes referred to in this Agreement individually as "**Party**" and collectively as the "**Parties**".

#### WITNESSETH

WHEREAS, the LESSOR owns and has under its jurisdiction certain real property formerly known as Madison Middle School, located at 3400 N.W. 87 Street, Miami-Dade County, Florida, more particularly described as a portion of Folio # 30-3109-000-0210 ("**School**"); and

WHEREAS, LESSEE was designated by the Florida Department of Education as a hope operator; and

WHEREAS, a School of Hope is a charter school operated by a hope operator which serves students from one or more persistently low-performing schools; is located in the attendance zone of a persistently low-performing school or within a 5-mile radius of such school, whichever is greater; and is a Title I eligible school; and

WHEREAS, the LESSOR, at its \_\_\_\_\_, 2020 meeting, authorized a charter school co-location service agreement with LESSEE, operating as a School of Hope charter school ("**Charter School**"), to provide localized support and solutions to include facilities coordination, food services, and IT support services ("**Co-Location Service Agreement**"); and

WHEREAS, LESSEE is desirous of leasing from LESSOR and LESSOR is desirous of leasing to LESSEE classroom, office and other ancillary space within the School, as more particularly described below, for the operation of the Charter School, under the terms and conditions as set forth below; and

WHEREAS, the LESSEE has formulated a plan for opening and operating its educational and recreational programs at the School, which the LESSEE represents to be a plan in accordance with all local, County, State, School Board, Federal and/or Center for Disease Control ("**CDC**") guidelines and requirements related to the COVID-19 pandemic, as such CDC guidelines may be amended from time to time ("**Opening Plan**"); and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this Agreement in accordance with Board Action No. \_\_\_\_\_, at its meeting of \_\_\_\_\_, 20\_\_; and

WHEREAS, LESSEE has authorized all signatories to this Agreement, at a meeting duly noticed, held on \_\_\_\_\_ in accordance with its By-Laws and regulations and at which meeting a quorum was present, to execute this Agreement on its behalf.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the LESSOR and LESSEE agree as follows:

I.

**RECITALS**

The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

II.

**DEMISED PREMISES**

Effective with the Commencement Date (as defined below) of this Agreement, LESSEE shall lease from LESSOR a portion of the School consisting of approximately 21,566 square feet of classroom and ancillary building space, and approximately 44,687 square feet of playfield and parking, and as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**DEMISED PREMISES**"). In addition and in conformance with Article XXXII, LESSEE shall have the right to access other portions of the School for the specific and limited purpose of gaining ingress to and egress from the DEMISED PREMISES.

Except as otherwise provided for in this Agreement, the Parties agree that LESSEE shall have exclusive use of classroom and ancillary space within the School, comprising 10,281 square feet. The Parties further acknowledge and agree that use of the dining area, located in Room 085 of Building 07 of the School, and comprising 3,671 square feet ("**Dining Area**"), and the auditorium, located in Room 081 and 081A of Building 08 of the School, and comprising 7,614 square feet ("**Auditorium**"), all as set forth in Exhibit "A" and consisting of a total of 11,285 square feet, shall be non-exclusive and shall be shared between the Parties in conformance with the use schedule outlined in Article V of this Agreement.

In addition to the above, LESSEE shall have exclusive use of a designated grass area located on the northeast side of the School, as shown on Exhibit "A" for use as parking for LESSEE'S staff and visitors ("**Parking Area**"), and if approved in writing by the District School Administrator, LESSEE may also use the parking lot located adjacent to the Parking Area for LESSEE's staff and visitors. LESSEE acknowledges and agrees that LESSEE shall, at the expiration, termination or cancellation of the Agreement or any extension thereof, restore the

Parking Area to the same or better condition as existed before the Commencement Date of this Agreement, at LESSEE'S sole cost and expense. Furthermore, LESSEE shall have use of the area located on the northwest side of the School along NW 35 Avenue, for parent vehicular drop off and pick up ("**Parent Drop-off Area**"), and for LESSEE'S Student Point of Entrance (as hereinafter defined), in the locations shown on Exhibit "A". In addition, LESSEE shall have use of the area located on the northwest side of the School, along N.W. 87 Street adjacent to the Playfield (as hereinafter defined), for bus drop off and pick up ("**Bus Drop-off Area**"), in the location shown on Exhibit "A". LESSEE'S Parking Area, as shown on Exhibit "A", shall also serve as the point of entrance for LESSEE'S staff ("**Staff Point of Entrance**"). LESSEE shall also have exclusive use of a designated portion of the field located on the northwest side of the School for use by LESSEE as its playfield area ("**Playfield**"), in the location shown on Exhibit "A". Notwithstanding the provisions of Article VI or any other terms of this Agreement, the Parties acknowledge and agree that as a condition of this Agreement, LESSEE, at its sole cost and expense, shall install a 6-foot chain link fence within the School's field (as set forth in Exhibit "A") in a location agreed to by the Parties in order to clearly demise the portion of the school field to be utilized as LESSEE'S Playfield and included in the DEMISED PREMISES. No other buildings or portions of the School site may be used by LESSEE, except by amending this Agreement granting LESSEE the right to do so.

### III.

#### TERM

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (the "**Effective Date**"). The initial term of this Agreement shall commence at 12:01 a.m. on the first day of the month immediately following the Effective Date (hereinafter referred to as the "**Commencement Date**") and ending at 11:59 pm on June 30, 2021, unless terminated sooner as provided for in this Agreement ("**Initial Lease Period**").

### IV.

#### RENT

The Parties acknowledge and agree that, for purposes of this Agreement, effective with the Commencement Date, the student enrollment of the Charter School is established at two-hundred forty-five (245) students. LESSEE shall pay to the LESSOR as consideration for use and occupancy of the DEMISED PREMISES, the sum of \$600.00 per student per year (\$147,000.00 per year), payable in equal installments of \$12,250.00 per month ("**Rent**"). The first payment of Rent shall be due and payable on the Commencement Date of this Agreement, and on the first day of each month



thereafter without demand.

The Parties acknowledge and agree that during the term of this Agreement and any extensions thereto, the student enrollment of the Charter School shall be re-evaluated and the Rent adjusted as follows: 1) within thirty (30) days following publication of the annual 'October Full Time Equivalent Report' and the 'February Full Time Equivalent Report', as published on the Florida Department of Education website (each, a "**FTE Reporting Period**", and the report a "**FTE Reporting Period Report**"), the LESSOR, through its authorized designee, shall confirm the student enrollment of the Charter School during each such FTE Reporting Period; 2) in the event the Charter School's student enrollment increases or decreases from the amount established in the previous FTE Reporting Period, there will be a corresponding adjustment in the amount of Rent to be paid by LESSEE (at a rate of \$600.00 per student per year) effective with the effective date of the FTE Reporting Period Report; and 3) the adjusted Rent amount shall remain unchanged until publication of any subsequent FTE Reporting Period Report depicting an increase or decrease in student enrollment over the then current number.

All payments shall be made payable to **The School Board of Miami-Dade County, Florida**, and shall be remitted, **without demand**, to the following location:

**Miami-Dade County Public Schools  
Planning, Design and Sustainability  
Attention: Executive Director  
1450 N.E. 2<sup>nd</sup> Avenue, Room 525  
Miami, Florida 33132**

If LESSEE fails to pay Rent on or before the due date, LESSEE shall be required to pay a late fee to LESSOR, at an Annual Percentage Rate of Prime Rate, as published in the Wall Street Journal in the week where the default takes place, plus five (5) percent, for each and every month that the past due rent remains unpaid. Failure of LESSEE to make timely payments of Rent, pay the past due amount(s) and/or pay the late fees shall constitute a material breach under this Agreement, and may result, at the LESSOR'S sole option, in the termination of this Agreement, in accordance with Article XVIII of this Agreement.

#### **V.**

#### **USE OF DEMISED PREMISES; CLOSURE DUE TO PANDEMIC**

The DEMISED PREMISES as identified in Exhibit "A" shall only be used by LESSEE, its students, faculty and staff for educational and recreational purposes as part of LESSEE's operation of a School of Hope charter school, and for no other purpose. Use of the DEMISED

PREMISES for any other purpose shall constitute a material breach under this Agreement.

LESSEE covenants and agrees to accept the DEMISED PREMISES in its “as-is”, “where-is” condition and basis with all faults as of the Commencement Date of this Agreement, subject to all easements, covenants and other encumbrances and limitations of record. LESSOR makes no representations or warranties of any type or nature whatsoever, either expressed or implied, as to the usefulness, physical condition or appropriateness of the DEMISED PREMISES for LESSEE’S operations or any specific use. LESSEE, by executing this Agreement, acknowledges and agrees that the LESSOR has made no representations whatsoever regarding the DEMISED PREMISES, including with respect to its environmental condition. LESSEE represents that it is relying and will continue to rely solely on its own investigations of the DEMISED PREMISES in its decision to lease it, and LESSEE further acknowledges and agrees that the LESSOR shall not indemnify the LESSEE in any way with respect to the DEMISED PREMISES.

In the same fashion, LESSEE shall accept any additional permanent or ancillary space and/or parking areas it may occupy within the School throughout the term of this Agreement in the condition it is in at the time of such occupancy. The provisions of this Paragraph shall survive the expiration or the earlier termination or cancellation of this Agreement.

Other than the Parking Area, Dining Area, Auditorium and any other common areas within the School, the LESSEE shall have full control, custody, right and use of the DEMISED PREMISES throughout the term of this Agreement. The Parties acknowledge and agree that the Auditorium and the Dining Area shall be utilized jointly by LESSOR and LESSEE in accordance with the schedule of use (“**Use Schedule**”), as established on an annual basis in the LESSOR’S official Elementary and Secondary School Calendar (“**School Calendar**”), with the LESSOR to have exclusive use of the Auditorium and the Dining Area at all other times. Such Use Schedule may be subsequently modified from time to time throughout the term of this Agreement, by mutual agreement of the Parties, or their designees, provided such modifications to the Use Schedule do not conflict with or negatively impact the operations of the School. LESSOR shall have the exclusive right to use and occupy all portions of the School not part of the DEMISED PREMISES at all times throughout the term of this Agreement.

Prior to the start of each academic school year as set forth in the School Calendar, LESSEE and the District School Administrator shall establish the times during which LESSEE may operate its educational program at the School, as well as the times LESSEE’S staff may gain or retain access to the School campus before and after operation of its educational program, but in no event shall LESSEE’S use exceed the School’s hours of operation. LESSEE further acknowledges and agrees

that LESSEE'S period of use shall not include Saturdays, Sundays and School District Holidays, and LESSEE shall not have access to or use of the DEMISED PREMISES during such periods that the School is closed, as established on an annual basis in the School Calendar.

In the event LESSEE seeks to use the DEMISED PREMISES on days and hours when the School would otherwise be closed (e.g. Saturdays, Sundays, School District Holidays, etc.), the LESSEE shall provide the District School Administrator with a written request at least ten (10) business days in advance, listing the days the LESSEE would like use of the DEMISED PREMISES, for review and approval at the District School Administrator's sole discretion. In such event, the LESSEE shall reimburse the LESSOR for operating costs borne by the LESSOR to keep the School open on such days, including, but not necessarily limited to, utilities, and custodial/janitorial staff and services, safe school officer/school resource officer, and food service. Reimbursement of such operating costs shall be in addition to the established Rent amount, and shall be paid to the District School Administrator within thirty (30) days of the occurrence. In addition, in the event the LESSEE seeks to use any other portion of the School not a part of the DEMISED PREMISES, on a one-time or short-term basis, the LESSEE shall request such use through the District School Administrator, subject to compliance with LESSOR'S Policies and District procedures.

LESSEE may, with the approval of the District School Administrator and at LESSEE'S sole cost and expense, request that the LESSOR re-key the locks within the DEMISED PREMISES in accordance with District standards and criteria, with the exception of the Parking Area, Playfield, Dining Area, Auditorium and other common areas which cannot be re-keyed. In such event, LESSOR shall provide LESSEE with a full set of keys to same. At the expiration, termination or cancelation of this Agreement, LESSEE shall be required, at LESSOR'S sole option, to re-key locks changed by LESSEE, if any, back to the School's key system, at LESSEE'S expense.

The sale or consumption of alcoholic beverages on the DEMISED PREMISES is expressly prohibited. In addition, use of the DEMISED PREMISES for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the LESSOR, including LESSOR'S Policies, COUNTY, STATE, or FEDERAL GOVERNMENT upon the DEMISED PREMISES.

Notwithstanding any other provisions of this Agreement, the LESSEE acknowledges and agrees that the LESSEE shall comply with Miami-Dade County Emergency Order 15-20, Miami-Dade County Emergency Order 21-20, as each Order may be subsequently modified, extended

or amended, as well as any other local, County, State, School Board or Federal Orders and CDC guidelines currently in place or that may be implemented, from time to time, related to the COVID-19 crisis (“**Emergency Orders**”) at all times in LESSEE’s use of the DEMISED PREMISES. These restrictions may include, but are not limited to, social distancing requirements, site supervision to ensure compliance, requirements for Personal Protective Equipment, sanitizing protocols, closure of facilities or restrictions on maximum capacity, inspections, licensing, permitting, etc., by all applicable jurisdictional entities, and the LESSEE shall provide to the LESSOR sufficient documentation acceptable to the LESSOR certifying compliance, at the LESSEE’S sole cost and expense, with any and all requirements set forth in the Emergency Orders and any policies or requirements which may be established by the LESSOR relating thereto (“**Certificate of Compliance**”). It is understood and agreed that, by virtue of accepting possession of the DEMISED PREMISES and providing the Certificate of Compliance, the LESSEE certifies to the School Board full compliance therewith, and further represents and certifies to the School Board that it shall continue to be in full compliance, at LESSEE’S sole cost and expense, with any and all requirements set forth in the Emergency Orders and any policies or requirements which may be established by the School Board relating thereto, until such time as the LESSEE notifies the LESSOR otherwise.. Enforcement of these procedures and mitigating measures by the LESSEE, in accordance with the Opening Plan, is a condition precedent to the LESSEE’s continued use and occupancy of the DEMISED PREMISES under any Emergency Order or School Board Policy related thereto. Non-compliance with the foregoing procedures and requirements shall be deemed a material breach of this Agreement, and may result in the immediate termination of this Agreement by the LESSOR, at the LESSOR’S sole option, and regardless of any other term or provision of this Agreement.

COVID-19 violations may require the immediate closure of the DEMISED PREMISES. In the event of a dispute of more than 48 hours between LESSOR and LESSEE, as to closure of the DEMISED PREMISES and/or School, the decision of the Superintendent of Schools shall be deemed final and be followed by immediate implementation of mitigating measures in accordance with the then current guidelines.

## VI.

### **IMPROVEMENTS**

Other than LESSEE’S obligation to construct a fence within the field, as set forth in Article II, the LESSEE, with prior written Notice to and approval of the LESSOR or its designee, such approval to be issued at the sole discretion of the LESSOR or its designee, and in accordance

with Article XXXII hereof, may construct interior improvements within the DEMISED PREMISES, at LESSEE'S sole cost and expense (all such improvements are collectively referred to herein as the "**Work**"). Notwithstanding the foregoing, LESSEE acknowledges and agrees that construction of improvements or modifications to any other portions of the DEMISED PREMISES or School, including without limitation, the School parking lots, playfield or open areas, or other exterior common areas, may not take place without an amendment to this Agreement in full compliance with Section 1013.15(1), F.S., specifically modifying the description and use of the DEMISED PREMISES.

LESSEE acknowledges and agrees that as a precondition to commencing any Work, LESSEE shall be responsible for payment to the BOARD of all costs borne by the BOARD for jurisdictional plan review, permitting, and inspections. LESSEE shall submit payment to the BOARD for the cost of such plan review, permitting and inspection services prior to commencement by the BOARD's consultant of such services. LESSEE further acknowledges and agrees that as a condition precedent to commencing any Work within the DEMISED PREMISES, LESSEE shall prepay to the LESSOR Five Percent (5%) of the estimated cost of the Work for project management related tasks, including serving as the liaison between the LESSOR and LESSEE for any design and construction activities within the DEMISED PREMISES. In that capacity, LESSOR shall assist LESSEE in preconstruction services, jurisdictional plan review, and other services required to facilitate the Work. Additionally, LESSEE shall be responsible for all costs associated with design and construction of the Work, including permits and any and all fees. LESSEE shall provide funding to LESSOR in the full amount charged for these services, prior to issuance by LESSOR of construction permits.

Prior to commencement of construction of any Work by the LESSEE or its contractors at the DEMISED PREMISES, the LESSEE shall submit plans and specifications, as required by the LESSOR, for review and approval. The Parties agree that the Work shall be performed in accordance with plans approved by LESSOR or its designee, which LESSOR may approve or disapprove at its sole authority and discretion. Plans must be signed and sealed by a duly licensed design professional and be of sufficient detail to secure any and all permits necessary to commence the Work. Any and all warranties between LESSEE and its architect/engineer of record shall flow to the LESSOR in the event of errors and omissions, and the LESSOR shall be named as Third-Party Beneficiary thereof. The plans shall be prepared in accordance with all applicable laws, rules, regulations, statutes and codes, including without limitation, the District design criteria, specifications and safety codes, the State Requirements for Educational Facilities

and the Florida Building Code, in effect at the time the plans are submitted to the LESSOR. All work shall be performed in a good and workmanlike manner by contractors who are licensed, insured and fully bonded, and the LESSEE shall provide evidence of same to the LESSOR prior to commencement of the Work. If required by the LESSOR, at the LESSOR's sole discretion, LESSEE'S contractors must be pre-qualified by the LESSOR, in accordance with District and School Board Policies before commencing the Work or any construction activities on the DEMISED PREMISES or any other portion of the School.

The LESSOR'S Building Department shall be the entity responsible for reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the Work. The Work shall commence only after issuance of proper permits, in conformance with the requirements of the LESSOR'S Building Department or other appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations, as provided under Article XXXII of this Agreement, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Requirements for Educational Facilities, and the District criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by LESSEE upon completion of the Work, and evidence of same, satisfactory to LESSOR, shall be provided without demand. All Work shall be limited to those areas designated in the plans, and LESSEE shall have no authority to access any other portions of the School not then a part of the DEMISED PREMISES, except as otherwise provided for in this Agreement or as authorized in writing by the LESSOR, or its designee, in its sole discretion and on an as-needed basis.

The Work shall conform at all times to the safety criteria established with and approved by the LESSOR, or its designee, and shall neither unreasonably disrupt or interfere with the LESSOR'S operations at the School. LESSEE and its contractors shall take all necessary safety precautions during the Work, secure all construction areas by appropriate construction fencing or barricades, and coordinate on an ongoing basis with the District School Administrator and assigned District Project Manager to ensure the safety of the LESSOR'S students, staff, visitors, invitees and the public at all times. In addition, LESSEE and its contractors shall work closely with the District School Administrator and assigned District Project Manager to ensure the Work does not interfere with or disrupt School or District operations. LESSEE shall make every reasonable effort to ensure that construction related activities to be performed within the DEMISED PREMISES are conducted during non-School hours, and LESSEE'S activities shall neither unreasonably disrupt nor interfere with the School's daily operations. Subject to compliance with



the provisions of the Jessica Lunsford Act, in the event that such activities must be conducted during School hours, or in the event LESSEE requires access to the DEMISED PREMISES for any other reason, LESSEE shall first secure the approval of the District School Administrator.

Prior to the commencement of the Work, LESSEE shall provide the LESSOR, or its designee, with a schedule for the commencement and completion of the Work. If the LESSOR, or its designee, requests that LESSEE cease any work within the DEMISED PREMISES due to unreasonable interference or violation of any applicable rules and regulations or the LESSOR'S criteria, then LESSEE shall immediately discontinue its activities at the DEMISED PREMISES, and shall proceed only after the LESSOR, or its designee, has reviewed the scheduling, safety and/or manner of work in question and has authorized LESSEE to continue.

LESSEE shall cause each and every of its contractors and subcontractors performing any work within the DEMISED PREMISES to indemnify, defend and hold harmless the LESSOR, its employees and representatives from any and all liability, damages and claims. In addition, as a pre-condition to commencing the Work, LESSEE shall require LESSEE'S contractor(s) to provide the LESSOR with insurance certificates evidencing insurance coverage and limits meeting, at a minimum, the following requirements: (1) Commercial General Liability Insurance in an amount not less than \$1 Million combined single limit per occurrence for bodily injury and property damage, (2) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the operations of LESSEE'S contractors and subcontractors, in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage, (3) Workers' Compensation Insurance for all employees of LESSEE'S contractors and subcontractors, as required by Florida Statutes, and (4) Property Insurance. "The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be an additional insured on all liability coverages except Workers' Compensation Insurance. LESSEE'S contractors and subcontractors shall maintain such insurance at all times while conducting construction related activities throughout the term of this Agreement.

The LESSEE covenants and agrees that it shall indemnify, hold harmless and defend LESSOR from and against any and all claims, liens, suits, actions or causes of action arising out of or in connection with any construction costs and expenses for improvements made by LESSEE within the DEMISED PREMISES or elsewhere on the School campus. In addition, LESSEE shall cause each and every of its contractors and subcontractors performing work at the DEMISED PREMISES (hereinafter collectively referred to as "**Lessee's Contractors**", and individually as the "**Lessee's Contractor**") to further covenant and agree, at Lessee's Contractors' own expense, and

upon written request by the LESSOR, to defend any suit, action or demand brought against the LESSOR on any claim or demand arising out of, resulting from, or incidental to the Lessee's Contractors performance under any contract by and between LESSEE and/or its assigns and any and all contractors and subcontractors. This provision shall survive the expiration, cancellation or early termination of this Agreement. Furthermore, LESSEE and/or its assigns shall cause the indemnification provision and the duty to defend provision in its Contract with Lessee's Contractors to survive the cancellation, early termination or expiration of any and all contracts by and between LESSEE and/or its assigns and any Lessee's Contractors.

If, as a result of LESSEE'S actions in the performance of the Work, or failure to act, portions of the School are damaged, in the sole opinion of the LESSOR, then the LESSEE shall repair and/or restore the damaged area, at its sole cost and expense, to the same or better condition as existed prior to such action. LESSEE shall complete the necessary repairs within thirty (30) days of receipt of written notice from the LESSOR. In the event that LESSEE is unable to complete the repair work within said thirty (30) day period, LESSEE shall provide the LESSOR with written notification stating the reasons, together with a mutually agreed to schedule for the completion of the repairs. If LESSEE fails to complete the repair work within the prescribed time frame, then the LESSOR, at its sole option, shall have the right, but not the obligation, to make the necessary repairs, at LESSEE'S sole cost and expense. LESSEE covenants and agrees that it shall reimburse the LESSOR for this work within thirty (30) days of receipt from the LESSOR of an invoice for same, accompanied by such documentation as may be reasonably required by LESSEE to substantiate the nature and completeness of the work. In the alternative, the LESSOR may instead place LESSEE in default under this Agreement.

Notwithstanding the foregoing, in the event of damage to the School site caused by LESSEE or its agents, contractors or invitees, resulting in a significant impact to operations or the safety and well-being of the LESSOR'S students, staff and visitors, and requiring immediate repair, as determined by the LESSOR at the LESSOR'S sole discretion, the LESSOR may, at the LESSOR'S sole discretion, complete the necessary repairs, at LESSEE'S sole cost and expense.

Prior to the start of any construction activities at the School, and irrespective of LESSEE'S estimate of the cost of construction of the Work, LESSEE shall provide to the LESSOR a payment and performance bond ("**Bond**") with a surety insurer authorized to do business in the State of Florida as surety, based on the cost of the Work as determined solely by the LESSOR. The Bond may be in the form described in Florida Statutes §255.05 or otherwise, so long as all protections and relevant provisions set forth in §255.05 are provided to all persons defined in Florida Statutes



§713.01 who furnish labor, services, or materials for the prosecution of the Work provided for in the Agreement.

LESSEE shall not permit any liens to be filed or attached to the School for any reason whatsoever, including, but not limited to, as a result of the Work performed by LESSEE pursuant to this Agreement. In the event that any such lien is recorded in the official records of Miami-Dade County, Florida, LESSEE shall, within twenty (20) calendar days of the date of such filing, cause such lien to be removed of record or properly transferred to a bond under Chapter 713, Florida Statutes. In the event a notice of violation is issued by any jurisdictional agency relating to the Work, said notice of violation shall be the sole responsibility of LESSEE, and LESSEE shall cure said violation(s) within thirty (30) days of receipt thereof, at LESSEE'S sole cost and expense. Should LESSEE fail to comply with this requirement, then LESSOR may, by its own effort, cause such lien or other violations to be removed of record and cured. LESSEE shall be liable to the LESSOR for all costs of such removal including, without limitation, any and all reasonable attorneys' fees, court costs and any other cost or expense incurred or expended by the LESSOR.

It is expressly understood by the Parties that LESSEE shall not commence any of the Work or construction activities within the DEMISED PREMISES or at or about the School site until LESSOR, or its designee, has received all items stipulated in this Agreement and has notified LESSEE, in writing, as to the approved date for the start of the Work.

At the completion of the Work, the LESSEE shall secure an inspection of the Work from LESSOR'S designee, verifying that the Work on the DEMISED PREMISES has been satisfactorily and properly completed, and shall not release the Lessee's Contractors from their contractual obligations or make final payment to the Lessee's Contractors until the LESSOR'S designee attests to the satisfactory completion of the Work. In addition, the LESSEE agrees that the LESSEE or the Lessee's Contractors shall restore the DEMISED PREMISES to a condition that is safe and usable, including without limitation, the removal and/or disposal of equipment, materials, personal property, debris and/or trash, all at the sole cost and expense of the LESSEE. The LESSEE shall provide to the LESSOR all as-built drawings, Warranties, test data, and any other documents related to the Work, and will provide proof of closure of any and all permits related to the Work, without demand and at no cost to the LESSOR.

Notwithstanding the above, LESSEE may request that LESSOR make improvements, alterations or repairs within the DEMISED PREMISES, provided that LESSEE deposits with LESSOR funds in an amount equal to the estimated cost thereof. In such event, LESSEE shall submit a written request to LESSOR setting forth the requested improvements, which LESSOR, in

its sole authority, may or may not choose to pursue. LESSOR shall, prior to the initiation of any improvements, provide the LESSEE with a cost estimate for the requested improvements, and LESSEE shall provide upfront funds equal to the amount of such cost estimate. The Parties agree that LESSOR shall not commence any work until LESSOR has received written approval from LESSEE as to the cost of improvements and the upfront funds.

## VII.

### **SUPERVISION AND SECURITY**

The LESSEE shall comply with all federal, state, and School Board and School site health, safety, and security requirements and criteria, and provide proper supervision and security in its use of the DEMISED PREMISES and maintain the DEMISED PREMISES safe and secure at all times. LESSEE acknowledges and agrees that LESSEE's students and visitors shall gain entrance to the School exclusively through a lockable gate on N.W. 35 Avenue immediately adjacent to LESSEE'S Playfield, as shown in Exhibit "A" ("**Lessee's Student and Visitor Point of Entrance**"). In addition, LESSEE further acknowledges and agrees that LESSEE's staff shall gain entrance to the School exclusively through the Staff Point of Entrance, as shown on Exhibit "A". In that regard, LESSEE shall station a staff member at Lessee's Student and Visitor Point of Entrance on all days that LESSEE occupies and uses the DEMISED PREMISES, for a period no less than 7:00 a.m. to 8:00 a.m., and 3:30 p.m. to 4:45 p.m., or as otherwise modified at the request of LESSEE and subject to approval of the District School Administrator. In addition, LESSEE shall, at LESSEE'S sole cost and expense, install, maintain and operate an electronic notification system at Lessee's Student Point of Entrance, which will serve to notify LESSEE'S staff located in Lessee's administrative offices in the relocatable unit adjacent to Building 02 (or at a location as otherwise determined by LESSEE) when LESSEE'S students need to enter the School, provided that at LESSEE's option and at LESSEE's sole cost and expense, LESSEE may request that LESSOR install the electronic notification system. Such request and the funding for such request shall comply with the ultimate paragraph in Article VI above. LESSEE acknowledges and agrees that LESSEE'S Student Point of Entrance shall remain locked at all times, except when attended by a member of LESSEE'S staff.

LESSEE further acknowledges and agrees that, in the event that LESSEE occupies and uses the DEMISED PREMISES during other than the School's hours of operation, as provided for under Article V hereof, LESSEE shall make any and all provisions which may be required to supervise its operations and provide security, inclusive of a safe school officer/school resource officer, for LESSEE'S students, staff and invitees, at LESSEE'S sole cost and expense.

The LESSEE shall secure and lock all doors and gates within the DEMISED PREMISES at

the completion of LESSEE'S daily use of the DEMISED PREMISES. LESSEE acknowledges and agrees that the District School Administrator shall have overall responsibility for any School site operational issues, including without limitation, building security and safety, and LESSEE shall comply with all such requirements and coordinate with the District School Administrator on an ongoing basis to assure the safety of the District's students, staff, visitors, invitees and the public at all times. In addition, LESSEE acknowledges and agrees that LESSEE'S use of the DEMISED PREMISES shall not unreasonably disrupt nor interfere with any of the District's educational activities or operations at the School, and agrees to work closely with the District School Administrator to minimize any impact on District operations.

LESSEE shall follow all State and LESSOR critical incident response procedures and promptly notify the LESSOR or its designee of any and all notices or communications received by LESSEE from any jurisdictional entity, as well as provide notice to LESSOR of any incidents that occurred, in relation to any health and safety issues or law enforcement incidents on the DEMISED PREMISES or elsewhere on the School site. Thereafter, LESSEE shall provide the LESSOR with all information reasonably requested by the LESSOR, and shall cooperate with LESSOR in implementing any policies or procedures by LESSEE required to mitigate any further incidents in this regard. This representation by LESSEE shall constitute a material inducement for LESSOR to enter into this Agreement. LESSEE'S failure to comply with the Supervision and Security provisions may, at LESSOR'S sole option, be deemed a default under the Agreement.

#### VIII.

#### **MAINTENANCE; CUSTODIAL SERVICES; CAPITAL IMPROVEMENTS/REPAIRS**

LESSOR shall provide all routine maintenance and repairs of the DEMISED PREMISES, including, but not limited to, ballast replacement, air conditioning filter cleaning and/or replacement, routine electrical and plumbing repairs, and shall also provide routine care of landscaped areas, parking areas and walking surfaces ("**Routine Maintenance**"). In addition, the Parties acknowledge and agree that LESSEE shall be solely responsible for securing and providing its own custodial and janitorial staff and services, including, without limitation, provision of all required supplies, including soap, hand paper towels, and cleaning/disinfectant supplies that meet LESSEE, LESSOR and department of health standards, to serve the DEMISED PREMISES, at LESSEE'S sole cost and expense, with the exception of the Auditorium and Dining Area which will remain the responsibility of the LESSOR. All such maintenance and custodial/janitorial services will be provided in compliance with the LESSOR'S standards, operating procedures and frequency of service.

Additionally, LESSEE may request that LESSOR provide additional maintenance in the form of interior painting, installation of fixtures or technology in classrooms and other cosmetic improvements (“**Additional Maintenance**”), which LESSOR, in its sole authority, may or may not choose to pursue. LESSOR shall, prior to the initiation of any Additional Maintenance, provide the LESSEE with a cost estimate for the requested work, and LESSEE shall provide upfront funds equal to the amount of such cost estimate. The Parties agree that LESSOR shall not commence any work until LESSOR has received written approval from LESSEE as to the cost of the work and the upfront funds.

The Parties acknowledge and agree that it may be necessary, from time to time, for LESSOR to complete certain capital improvements/repairs beyond those to be provided as a part of Routine Maintenance (“**Capital Improvements/Repairs**”). Capital Improvements/Repairs may include, but is not limited to, major repair and/or replacement of the roof, elevator and Heating Ventilation Air Conditioning system, and substantive repairs/upgrades to the field to make the area safe and usable. LESSEE agrees to reimburse LESSOR for a prorata share of such costs within thirty (30) days of receiving an invoice for same, based on the ratio of DEMISED PREMISES to total School building and/or field area. In all such instances, LESSOR shall notify LESSEE in advance of initiating Capital Improvements/Repairs, and will provide LESSEE commercially reasonable documentation verifying the total cost of the work.

Notwithstanding the above or any other provisions of this Agreement, the LESSEE shall be solely legally responsible and fully liable for compliance with all maintenance requirements and mitigating measures, under any Emergency Order or School Board Policy relating thereto, at the LESSEE’s sole cost and expense. Enforcement of these procedures is a condition precedent to the LESSEE’s continued use and occupancy of the DEMISED PREMISES under any Emergency Order or School Board Policy related thereto. Non-compliance with the foregoing procedures and requirements shall be deemed a material breach of this Agreement. Occupancy of the Demised Area by LESSEE shall be deemed a representation to LESSOR, on which LESSOR will rely, that LESSEE is in full compliance with all Emergency Orders, and will continue to be in full compliance with all applicable Emergency Orders, relating to the COVID-19 pandemic.

## **IX.**

### **INSURANCE**

The LESSEE shall, on or before the Commencement Date of this Agreement, provide the LESSOR with proof of insurance evidencing insurance coverage and limits meeting, at a minimum, the following requirements:

A. Workers' Compensation/Employer's Liability Insurance.

Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Board on Compensation Insurance, without restrictive endorsements. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One: "Statutory"

Part Two: \$ 1,000,000 Each Accident

\$ 1,000,000 Disease - Policy Limit

\$ 1,000,000 Disease - Each Employee

B. Commercial General Liability Insurance

Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$ 2,000,000 General Aggregate

\$ 2,000,000 Products/Completed Operations Aggregate

\$ 1,000,000 Personal and Advertising Injury

\$ 1,000,000 Each Occurrence

LESSEE shall name the LESSOR as an additional insured on a form no more restrictive than the CG20 10.

C. Automobile Liability Insurance

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Agreement. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000 Each Occurrence - Bodily Injury and Property

D. Property Insurance covering LESSEE'S contents within the DEMISED PREMISES.

"The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be named as an additional insured on all liability coverages except Workers' Compensation Insurance. Proof of coverage shall be provided to the LESSOR on an original certificate of insurance endorsed to reflect a minimum thirty (30) day advanced notice of cancellation. The certificate of insurance shall be delivered to the LESSOR on or before the Effective Date of this Agreement, and shall remain in full force and effect during the term of this Agreement, and the LESSEE shall furnish the LESSOR evidence of renewals of such insurance policies no less than thirty (30) days prior to the expiration of the then current policies.

**X.**

**FURNITURE, FIXTURES AND EQUIPMENT**

LESSEE may, if agreed to by the District School Administrator, use any furniture, fixtures and equipment ("FF&E") owned by the LESSOR located within the DEMISED PREMISES as of the Commencement Date of this Agreement, subject to an inventory to be conducted jointly by LESSEE and the District School Administrator, prior to the Commencement Date, which inventory shall become **Exhibit "B"** of the Agreement. All FF&E is made available in its "as-is", "where-is" condition and basis with all faults, and LESSOR makes no representations or warranties whatsoever, and LESSEE assumes all risks related thereto. Prior to the commencement of each school year, or more often at the request of either Party, the inventory must be updated based on a joint assessment by the LESSEE and the District School Administrator, and if there are any changes to the inventory, Exhibit "B" will be modified accordingly and made a part of this Agreement, and shall remain in effect until such time as it may be further amended. Should any FF&E be damaged or missing, LESSEE shall be responsible for replacing or repairing same, or reimbursing LESSOR for the cost to repair or replace such damaged or missing item, at the sole option of LESSOR, and at the then current cost.

Upon the termination, expiration or cancellation of the Agreement, all FF&E listed on Exhibit "B" shall be surrendered by LESSEE to LESSOR in accordance with Article XXII of this Agreement, and any damaged or missing items shall be replaced, repaired or paid for as stipulated above.

**XI.**

**UTILITIES AND OTHER SERVICES**

The LESSOR shall establish and pay all utility accounts serving the DEMISED PREMISES including electricity, water, sewer, solid waste disposal, storm water and trash and recycling collection.

## XII.

### **INDEMNIFICATION AND HOLD HARMLESS**

LESSEE does hereby agree to indemnify and hold harmless the LESSOR, its members, officers and employees, from and against any and all liability, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons including death, or damage to tangible property arising out of or incidental to the performance of the Agreement by or on behalf of LESSEE, whether or not due to or caused in part by the negligence or other culpability of the LESSOR, excluding only the sole negligence or culpability of the LESSOR.

In addition, LESSEE agrees, at its own expense, and upon written request by the LESSOR, to defend any suit, action or demand brought against the LESSOR on any claim or demand arising out of, resulting from or incidental to performance under this Agreement. Further, LESSEE shall indemnify LESSOR against any successful Claims Bill imposed on the LESSOR related to LESSEE'S actions under this Agreement, and shall make payment under any such successful claim.

The LESSOR does hereby agree to indemnify and hold harmless the LESSEE, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the LESSOR shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the LESSOR arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the LESSOR. However, nothing herein shall be deemed to indemnify the LESSEE from any liability or claim arising out of the negligent performance or failure of performance of the LESSEE or as a result of the negligence of any unrelated third party nor for any claim relating to the COVID-19 pandemic.

The provisions of this Article shall survive the expiration, or early termination or cancellation of this Agreement. Nothing in this Agreement is intended to operate as a waiver of LESSOR'S sovereign immunity.

## XIII.

### **NO LIABILITY FOR PERSONAL PROPERTY**

LESSEE agrees to insure or self-insure its interests in personal property to the extent it deems necessary or appropriate and hereby waives all rights to recovery for loss or damage of



such property by any cause whatsoever. LESSEE hereby waives all rights of subrogation under any policy or policies it may carry on property placed or moved on the DEMISED PREMISES.

**XIV.**

**LIABILITY FOR DAMAGE OR INJURY**

The LESSOR shall not be liable for any damage or injury which may be sustained by the LESSEE or its invitees on or about the DEMISED PREMISES or School site, other than damage or injury resulting from the negligent performance or failure of performance on the part of the LESSOR, its agents, representatives or employees, and in such event the LESSOR'S liability shall be subject to the limitations included within Section 768.28, Florida Statutes. The LESSOR shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God. The provisions of this Article shall survive the expiration, or early termination or cancellation of this Agreement.

**XV.**

**ASSIGNMENT AND SUBLETTING**

LESSEE shall not, at any time during the term of this Agreement, sublet in part or whole the DEMISED PREMISES, or assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or allow any other individual or entity to operate or manage the DEMISED PREMISES, or permit the DEMISED PREMISES to be occupied by other persons, firms, corporations, or governmental units. Any assignment, sublet or otherwise, shall constitute a material breach under this Agreement, and may result, at LESSOR'S sole option, in the termination of this Agreement, as outlined in Article XVIII of this Agreement.

**XVI.**

**EXTENSION OF AGREEMENT**

The term of this Agreement may be extended, at the sole option of the LESSOR, for four (4) additional periods of one (1) year each, under the same terms and conditions contained in this Agreement other than the amount of Rent to be paid by LESSEE, which shall be adjusted to comport with the maximum per student amount allowed under the then current School of Hope legislation, provided LESSEE gives written Notice to the LESSOR, as set forth in Article XXIX, at least one hundred twenty (120) days prior to the expiration of the then current term, and LESSEE is not in default in performance of the obligations set forth in this Agreement. The Parties acknowledge and agree that any such extension of the term is subject to that certain School of Hope Performance-Based Agreement by and between The School Board of Miami-Dade County,



Florida and LESSEE, approved by the School Board on May 8, 2019 (“**School of Hope Performance Based Agreement**”) being in effect at the time such extension is requested by LESSEE, and on the anniversary of the Commencement Date of this Agreement. All extensions of the term shall be accomplished through the execution by the Parties of an amendment to this Agreement.

## **XVII.**

### **CANCELLATION**

In addition to the provisions of Article XXX, the LESSEE shall have the right to cancel the Agreement, without penalty, in the event of default by LESSOR, which default is not cured within the applicable time frames, as set forth in Article XVIII of this Agreement.

In addition to the provisions of Article XXX, the LESSOR shall have the right to cancel this Agreement, without penalty, in the event the LESSEE is in default of any of the terms and conditions of this Agreement, which default is not cured within the applicable time frames, as set forth in Article XVIII of this Agreement. Waiver of the LESSOR’S right to cancel this Agreement at will is subject to issuance of a formal Waiver by the Superintendent of Schools prior to execution of this Agreement by the Parties.

Notwithstanding the above, the Parties acknowledge and agree that any material breach of this Agreement may result in the immediate cancellation of this Agreement, irrespective of Article XVIII of this Agreement.

In the event of cancellation by either Party, the LESSEE shall surrender and vacate the DEMISED PREMISES in compliance with Article XXII of this Agreement.

## **XVIII.**

### **DEFAULT**

The LESSOR shall notify the LESSEE in writing regarding the LESSEE’S failure to perform or to comply with the terms and condition of this Agreement. In the event the LESSEE fails to cure the default within thirty (30) days after receiving written notice or does not provide the LESSOR with a written response indicating the status of the LESSEE’S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the LESSOR shall have the right to cancel this Ground Lease, without penalty, upon ten (10) days additional written notice to LESSEE.

Notwithstanding the above, in the event of a material breach on the part of LESSEE (as enumerated below), LESSEE shall have fifteen (15) days (or seven (7) days relating to COVID-19) from receipt of notice from LESSOR to cure such material breach. In the event the LESSEE fails to

cure the material breach within fifteen (15) days (or seven (7) days relating to COVID-19) after receiving written notice, the LESSOR shall have the right to cancel this Agreement, without penalty, upon ten (10) days additional written notice to LESSEE. The following shall constitute a material breach on the part of LESSEE; provided that in the event of a material breach under (7) below, LESSEE shall have ten (10) days from receipt of notice from LESSOR to cure such material breach: (1) failure to operate LESSEE'S Charter School on the DEMISED PREMISES for more than one-hundred twenty (120) consecutive days after the Commencement Date of this Agreement, (2) failure to comply with the Jessica Lunsford Act, (3) failure to comply with Article XXI of this Agreement regarding infrastructure improvements and regulatory compliance, (4) failure to pay taxes or special assessments as outlined in Article XXI of this Agreement, (5) in the event the tax-exempt status of the DEMISED PREMISES or School is rescinded or is at risk of being rescinded, as outlined in Article XXXIX(K) of this Agreement, (6) assignment or sublet of the DEMISED PREMISES, (7) failure to pay Rent or any other expenses to LESSOR as provided for in Article IV of this Agreement, (8) use of the DEMISED PREMISES for any reason not provided for in Article V of this Agreement, and (9) cancelation or termination of the School of Hope Performance Based Agreement.

The LESSEE shall notify the LESSOR in writing regarding the LESSOR'S failure to perform or to comply with the terms and conditions of this Agreement. If the LESSOR fails to cure the default within thirty (30) days after receiving written notice or does not provide the LESSEE with a written response indicating the status of the LESSOR'S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the LESSEE shall have the right to cancel this Agreement, without penalty, upon ten (10) days additional written notice to LESSOR.

Notwithstanding the above, in the event of a material breach on the part of LESSOR (as enumerated below), LESSOR shall have ten (10) days from receipt of notice from LESSEE to cure such material breach. In the event the LESSOR fails to cure the material breach within ten (10) days after receiving written notice, the LESSEE shall have the right to cancel this Agreement, without penalty, upon ten (10) days additional written notice to LESSOR. The following shall constitute a material breach on the part of LESSOR: unreasonable disruption or interference with LESSEE'S ability to operate its Charter School at the DEMISED PREMISES.

## **XIX.**

### **PEACEFUL POSSESSION**

Subject to the terms, conditions and covenants of this Agreement, LESSEE shall and may peaceably have, hold and enjoy the above described DEMISED PREMISES, without hindrance or

interference by the LESSOR.

**XX.**

**LESSOR'S RIGHT OF ENTRY**

Other than in event of an emergency, after first providing reasonable notice to LESSEE, the LESSOR, or any of its agents, representatives or employees, shall have the right to enter said DEMISED PREMISES at all reasonable times to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISES PREMISES, provided such activities do not unreasonably interfere with the LESSEE'S use of the DEMISED PREMISES.

**XXI.**

**TAXES AND REGULATORY COMPLIANCE**

LESSEE shall be responsible for collection and payment of any taxes, fees or other assessments, including but not limited to sales tax, ad valorem tax, all licenses, permits or other taxes which may be imposed on the School or DEMISED PREMISES, as a result of the leasing, use and occupancy of the DEMISED PREMISES by LESSEE.

If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to LESSEE'S lease, use or occupancy of the DEMISED PREMISES, LESSEE acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, at LESSEE'S sole cost and expense prior to commencement of any work contemplated.

Non-compliance with the provisions of this Article XXI shall be deemed a material breach of this Agreement.

**XXII.**

**SURRENDER OF PREMISES**

Except as otherwise provided in this Agreement, LESSEE agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the DEMISED PREMISES to LESSOR in good order and repair and in as good condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. The LESSEE shall be required to promptly remove all of LESSEE'S personal property and other items belonging to LESSEE from the DEMISED PREMISES. In addition, LESSEE shall be required, at LESSOR'S sole option, to re-key locks changed by LESSEE, if any, back to the School's key system, and to remove any improvements, facilities or signage constructed or installed by

LESSEE under this Agreement, and to restore the DEMISED PREMISES to the same or better condition as existed before the Commencement Date of this Agreement, including, without limitation, the Parking Area and Playfield. In the event LESSOR elects to retain any or all improvements constructed or installed by LESSEE, LESSEE agrees to convey title to the improvements to LESSOR, without compensation or remuneration to the LESSEE or any other parties.

LESSEE shall promptly return all keys and other items belonging to LESSOR and shall coordinate with the LESSOR to ensure a proper and timely surrender of the DEMISED PREMISES. Any of LESSEE'S personal property not removed within ten (10) days after expiration, termination or cancellation of this Agreement shall be considered abandoned.

**XXIII.**

**AMENDMENTS**

In addition to the requirements set forth elsewhere in this Agreement, LESSOR and LESSEE, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement, which shall be accomplished through the execution by the Parties of an amendment to this Agreement duly approved by the School Board in compliance with all applicable laws, including, without limitation, Section 1013.15(1), F.S. Such amendments shall be effective only when signed by LESSOR and LESSEE and shall be incorporated as part of this Agreement.

**XXIV.**

**NON-DISCRIMINATION**

LESSOR and LESSEE agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, or as otherwise provided by law, in the use of the DEMISED PREMISES. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the DEMISED PREMISES by a Party hereto has occurred, such event shall be treated as a Default hereunder.

**XXV.**

**LEGAL FEES AND COURT COSTS**

In the event of any dispute or litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs, from pre-trial proceedings through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

**XXVI.**

**CONSTRUCTION OF AGREEMENT**

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be exclusively in Miami-Dade County, Florida. All applicable laws shall be construed as same presently exist and as they may be amended hereafter.

**XXVII.**

**SEVERABILITY**

In the event any paragraph, clause or sentence of this Agreement or any future amendment thereto is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by any deletion, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

**XXVIII.**

**WAIVER**

No waiver of any provision shall be deemed to have been made unless such waiver is in writing and signed by LESSOR or LESSEE. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

**XXIX.**

**NOTICE AND GENERAL CONDITIONS**

A. All notices or communications under this Agreement by either Party to the other (“**Notice**”) shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to LESSOR:

The School Board of Miami-Dade County, Florida  
c/o Superintendent of Schools  
School Board Administration Building  
1450 N.E. Second Avenue, Room 912  
Miami, Florida 33132  
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools  
Office of School Facilities  
Attention: Chief Facilities Design & Construction Officer  
1450 N.E. Second Avenue, Room  
Miami, Florida 33132  
Fax: 305-995-1918  
E-mail: [RPerez6@dadeschools.net](mailto:RPerez6@dadeschools.net)

With a copy to:

The School Board of Miami-Dade County, Florida  
School Board Attorney's Office  
1450 NE 2<sup>nd</sup> Avenue, #400  
Miami, FL 33132  
Attn: School Board Attorney  
Fax: 305-995-1412  
E-mail: [Walter.Harvey@dadeschools.net](mailto:Walter.Harvey@dadeschools.net) and [ACraft@dadeschools.net](mailto:ACraft@dadeschools.net)

In the case of notice or communication to LESSEE:

Gabriella DiFilippo  
c/o KIPP New Jersey  
60 Park Place, #802  
Newark, NJ 07102  
Email: [gdifilippo@kippnj.org](mailto:gdifilippo@kippnj.org)

With a copy to:

Daniel Woodring, Esq.  
Woodring Law Firm  
111 N. Calhoun St.  
Suite 9  
Tallahassee, FL 32301  
Email: [Daniel@woodringlawfirm.com](mailto:Daniel@woodringlawfirm.com)

B. For purposes of this Agreement, the Superintendent of Schools or designee shall be the party designated by the LESSOR to grant or deny any and all approvals under this Agreement relating to operational issues.

C. In addition to the above, the Superintendent of Schools shall also be the party designated by the LESSOR to execute amendments to this Agreement within the authority granted him by the School Board and to grant or deny any approvals required under this

Agreement, including authorizing construction within the DEMISED PREMISES, placing the LESSEE in default, and canceling or terminating the Agreement as provided herein.

D. As further detailed in Article XXXVII, prior to execution of this Agreement, LESSEE shall deliver to the LESSOR sufficient documentation, acceptable to the LESSOR, evidencing that LESSEE is active and authorized to do business in the State wherein it was duly organized and in the State of Florida, including any and all documentation relating to LESSEE'S formation, existence and legal and good standing status with corporate or legal status to be provided periodically thereafter, as required by the LESSOR. In addition, LESSEE shall deliver to LESSOR, prior to execution of this Agreement, the necessary resolutions in a form acceptable to LESSOR, verifying that LESSEE is authorized to enter into this Agreement, and that the party signing this Agreement is fully authorized and has the legal capacity to do so, on behalf of the LESSEE.

E. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "**Day**" as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for LESSOR and Counsel for LESSEE may deliver Notice on behalf of LESSOR and LESSEE, respectively. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

### **XXX.**

#### **DAMAGE AND DESTRUCTION**

Other than damage or destruction caused by LESSEE, in the event the DEMISED PREMISES should be destroyed or so damaged by fire, windstorm or other casualty, in whole or in part, to the extent the DEMISED PREMISES are rendered untenable or unfit for the purposes intended, LESSEE may cancel this Agreement with thirty (30) days advance written notice to LESSOR. If LESSEE fails to cancel this Agreement, LESSOR may, at LESSOR'S sole option, either cancel this Agreement by giving written notice to the LESSEE, or repair or replace the damaged/destroyed facilities, at LESSOR'S expense. If LESSOR opts to repair or replace the damaged/destroyed facilities, then LESSOR shall cause the damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time



as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs, coordination with FEMA, and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then LESSEE may, at its sole option, cancel this Agreement.

Any damage or destruction sustained to all or portions of the DEMISED PREMISES or School site as a result of LESSEE'S actions shall be repaired by LESSEE, at LESSEE'S sole cost and expense. In that event, LESSEE shall cause the damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then LESSOR may, at its sole option, place the LESSEE in default. LESSOR and LESSEE agree that in the event of cancellation of the Agreement due to damage or destruction, LESSEE shall surrender the DEMISED PREMISES to LESSOR in compliance with Article XXII of the Agreement.

### XXXI.

#### **HAZARDOUS MATERIALS**

For purposes of this Agreement, the term "**Hazardous Substances**" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law. The term "**Environmental Law**" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the School or DEMISED PREMISES, or arising from LESSEE'S use or occupancy of the DEMISED PREMISES, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the DEMISED PREMISES. The term "**Hazardous Substances Discharge**" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during



the term, at or from the DEMISED PREMISES (unless caused solely by LESSOR), or that arises at any time from LESSEE'S use or occupancy of the DEMISED PREMISES.

LESSEE shall not cause or permit to occur: (a) any violation of any Environmental Law on the DEMISED PREMISES or elsewhere on the School site, or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the DEMISED PREMISES, or the transportation to or from the DEMISED PREMISES of any Hazardous Substance.

LESSEE shall, at LESSEE'S expense, comply with all applicable Environmental Laws with respect to the DEMISED PREMISES and School. LESSEE shall, at LESSEE'S own expense, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to the DEMISED PREMISES during the term of this Agreement. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by LESSEE with respect to the DEMISED PREMISES or caused by the LESSEE elsewhere on the School site, then LESSEE shall, at LESSEE'S own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. LESSEE shall promptly notify LESSOR of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the DEMISED PREMISES or elsewhere on the School site, and shall promptly provide LESSOR with all information reasonably requested by LESSOR regarding LESSEE'S use, generation, storage, transportation or disposal of Hazardous Substances in or at the DEMISED PREMISES.

LESSEE shall indemnify LESSOR against any Hazardous Substances Discharge demonstrated to have been caused by LESSEE. The obligations and liability of LESSEE under this paragraph shall survive the expiration, cancellation or termination of this Agreement.

#### **XXXII.**

#### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

LESSEE shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, School Board Policies, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, COVID-19 restrictions or any restrictions and/or measures relating to a pandemic as may defined by federal, state, local and/or Board policy, as all may be further amended from time to time and to the extent required by applicable law, whichever is more restrictive. The Parties further agree that this Agreement may be modified by

the Board in compliance therewith.

**XXXIII.**

**SUBORDINATION**

This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases and the rights of the LESSOR under those leases and to all financing that may now or hereafter affect the leases, the DEMISED PREMISES or the School, or any portions thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, LESSEE shall execute, within thirty (30) calendar days of request, any certificate that LESSOR may request.

**XXXIV.**

**FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS &  
ACCESS TO RECORDS**

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. LESSEE understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The LESSEE shall keep and maintain public records required by the LESSOR to perform the service. The LESSEE shall keep records to show its compliance with this Agreement. LESSEE'S contractors and subcontractors must make available, upon request of the LESSOR, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the LESSEE or its assigns, contractors or subcontractors which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the LESSOR'S custodian of public records, the LESSEE shall provide the LESSOR with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. The LESSEE shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the expiration or early termination or cancellation of this Agreement if the LESSEE does not transfer the records to the LESSOR. The LESSEE, its assigns, contractors and sub-contractors shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). The LESSEE, upon completion of the Agreement, shall transfer, at no cost to the LESSOR, all public records in possession of the LESSEE or keep and maintain public records

required by the LESSOR to perform the service. If the LESSEE transfers all public records to the LESSOR upon completion of the Agreement, the LESSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LESSEE keeps and maintains public records upon completion of the Agreement, the LESSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the LESSOR, upon request from the LESSOR'S custodian of public records, in a format that is compatible with the information technology systems of the LESSOR.

The LESSEE shall incorporate this provision into every contract that it enters into relating to the DEMISED PREMISES.

**IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, [pr@dadeschools.net](mailto:pr@dadeschools.net), and 1450 NE 2 Avenue, Miami, Florida 33132.**

**XXXV.**

**SIGNAGE**

LESSEE shall be permitted to install identification signage on the exterior of the School and within the DEMISED PREMISES, subject to the express prior written approval of LESSOR, or its designee. In addition, such signage, if approved, shall be installed in conformance with all rules and regulations governing public schools, and at LESSEE'S sole cost and expense.

Upon the termination, expiration or cancellation of this Agreement, LESSEE shall remove, at LESSEE'S expense, from the DEMISED PREMISES or School any signage erected by LESSEE, and restore the area to the same or better condition as existed prior to LESSEE'S installation of the signage.

**XXXVI.**

**USE OF SCHOOL AS A REVENUE GENERATOR**

LESSOR shall at all times retain the exclusive right to be the sole authorizer and recipient of revenue generators, in compliance with LESSOR'S Policies, relating to the DEMISED PREMISES and School site, including, without limitation, third party advertising, installation of wireless telecommunications facilities and/or other similar endeavors, provided such endeavors do not unreasonably interfere with LESSEE'S rights to peaceful enjoyment of the DEMISED PREMISES.

**XXXVII.**

**REPRESENTATIONS**

A. LESSEE is duly organized, validly existing, and in good standing under the laws of the

Florida and is duly qualified to transact business in the State of Florida. LESSEE'S corporate status shall remain active and in good standing throughout the term of this Agreement, and LESSEE shall provide evidence of same to LESSOR prior to the Effective Date of this Agreement and annually thereafter, as required by the LESSOR. LESSEE has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by LESSEE of its obligations under this Agreement, have been duly authorized by all necessary action of LESSEE, and do not contravene or conflict with any provisions of LESSEE'S Articles of Incorporation and By-Laws, or any other agreement binding on LESSEE. The individual(s) executing this Agreement on behalf of LESSEE has/have full authority to do so.

B. LESSEE'S use of the DEMISED PREMISES shall be leasehold in nature, and the LESSOR shall at all times retain Fee Simple ownership of the DEMISED PREMISES and balance of the School site.

#### **XXXVIII.**

#### **INTELLECTUAL PROPERTY RIGHTS**

LESSEE shall indemnify and hold harmless the LESSOR from and against all liability of any nature or kind, including damages, costs and expenses (including reasonable attorney's fees and costs at the trial level and through all appeals) for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of this Agreement. If LESSEE uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exceptions that the LESSEE shall be liable for all royalties or costs arising from the use of such design, device or materials in any way involved in the activities contemplated by this Agreement.

#### **XXXIX.**

#### **MISCELLANEOUS PROVISIONS**

- A. RECORDATION: This Agreement shall not be recorded by either Party.
- B. EMINENT DOMAIN: If the DEMISED PREMISES or any part of the School are taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. Rent will be prorated to the date of termination. LESSEE may pursue all available remedies for the taking but will have no interest in the award made to the LESSOR.
- C. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who

are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

- D. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Agreement.
- E. WAIVER OF TRIAL BY JURY: THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT OR LESSEE'S USE OR OCCUPATION OF THE DEMISED PREMISES.
- F. HEADINGS FOR CONVENIENCE ONLY: The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.
- G. BROKERS: LESSEE represents that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement. If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of LESSEE ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the LESSOR ("**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement.
- H. PROMOTION: Other than activities undertaken to promote LESSEE'S program, LESSEE shall not be permitted to use the DEMISED PREMISES or School for any type of promotion or advertising of any kind or nature whatsoever.
- I. USE APPROVALS: LESSEE shall be responsible for determining and securing, at its sole cost and expense, all federal, state, county, municipal and/or other permits, licenses, use approvals, occupational licenses, certificates or approvals needed, if any, for the operation of LESSEE'S program at the DEMISED PREMISES, prior to the Commencement Date of the Agreement.
- J. COUNTERPARTS: This Agreement may be signed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this

document to physically form one Agreement.

- K. TAX-EXEMPT STATUS: In addition to the provisions of Article XXI of this Agreement, the LESSEE acknowledges and agrees that in the event the tax-exempt status of the DEMISED PREMISES or School is rescinded or is at risk of being rescinded by Miami-Dade County or other appropriate jurisdictional governmental entity as a result of the use, occupancy or lease of same by the LESSEE, such rescission or potential rescission (as may be evidenced by a Notice of Proposed Property Taxes or any other official notice of any tax imposed by County, State or any other jurisdictional entity) shall constitute a material breach under this Agreement, and may result, at the LESSOR'S sole option, in the termination of this Agreement for cause, as outlined in Article XVII of this Agreement. Payment of any taxes so imposed shall be remitted to the LESSOR within ten (10) days of receipt of notice, without demand.
- L. REGULATORY AUTHORITY: It is expressly understood by the Parties that notwithstanding any provisions of this Agreement to the contrary, LESSOR retains all of its regulatory authority as a School Board and School District under Florida law and shall in no way be estopped from withholding or refusing to issue any approvals of applications under present or future laws and regulations of whatever nature applicable to the LESSEE or be liable for the same. Furthermore, the School Board or the School District shall not, by virtue of this Agreement be obligated to grant any approvals of applications under present or future laws of whatever nature applicable to the foregoing.
- M. SOVEREIGN IMMUNITY: No provision contained in this Agreement shall be deemed a waiver of the LESSOR'S sovereign immunity.

**XL.**

**ENTIRE AGREEMENT**

This Agreement and all Exhibits attached hereto, as those Exhibits may be substituted from time to time as provided for herein, constitute the entire agreement between the Parties and supersedes all previous negotiations, and it may be modified only by an agreement in writing signed by LESSOR and LESSEE.

**[INDIVIDUAL SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the LESSOR and the LESSEE have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

WITNESSES AS TO LESSOR:

**LESSOR:**  
THE SCHOOL BOARD OF MIAMI-DADE  
COUNTY, FLORIDA

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Alberto M. Carvalho  
Superintendent of Schools

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**TO THE LESSOR: APPROVED AS TO RISK  
MANAGEMENT ISSUES:**

Office of Risk and Benefits Management

**RECOMMENDED:**

\_\_\_\_\_  
Risk and Benefits Officer

\_\_\_\_\_  
Jaime G. Torrens

Chief of Staff

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**TO THE LESSOR:  
APPROVED AS TO TREASURY  
MANAGEMENT ISSUES**

Office of Treasury Management

**TO THE LESSOR: APPROVED AS TO  
FORM AND LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
School Board Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES AS TO LESSEE:

**LESSEE:**  
KIPP MIAMI, INC. a Florida not-for-profit  
corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT "A"**  
**TO**  
**LEASE AGREEMENT**

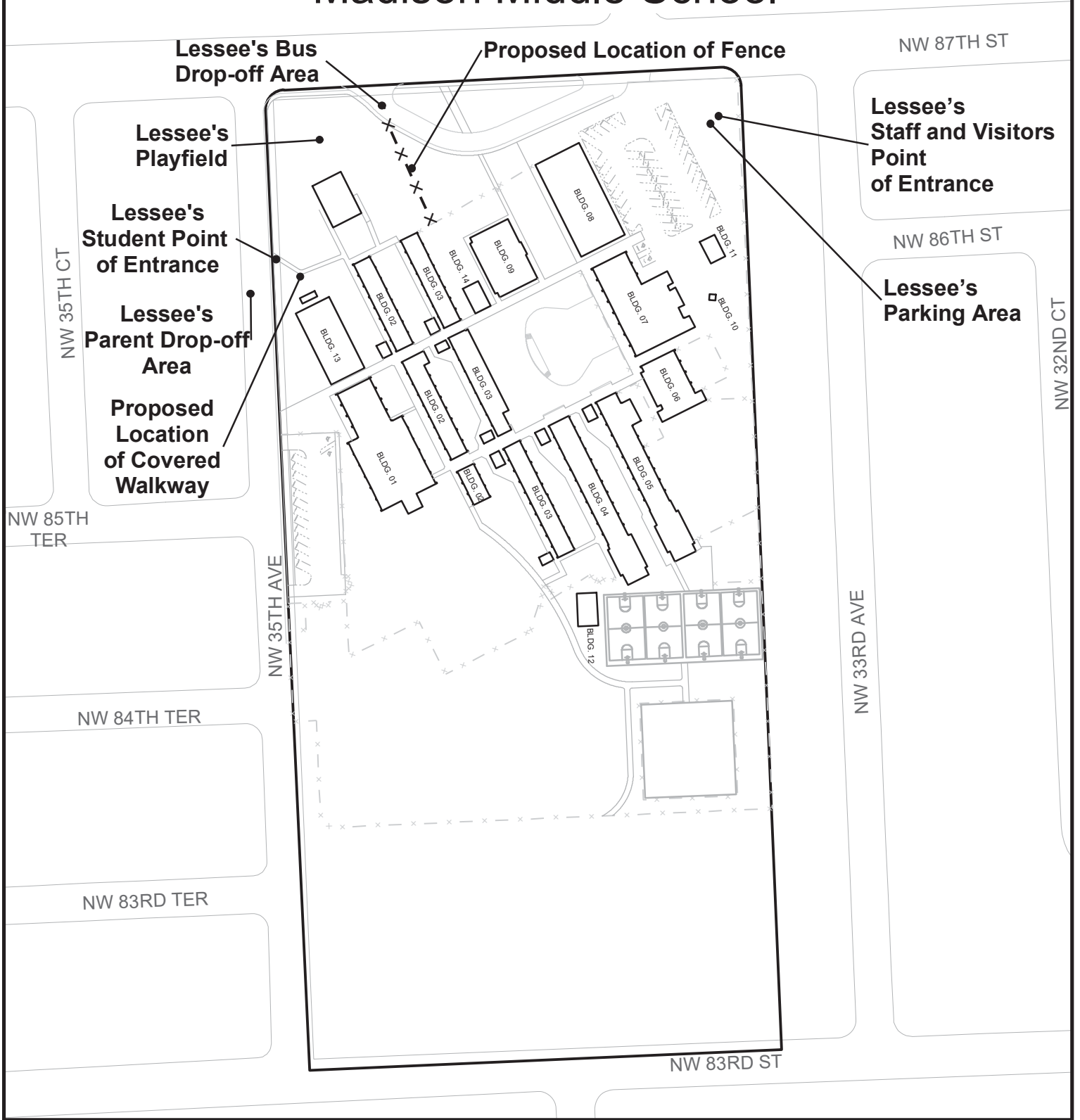
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**DEMISED PREMISES**

[consisting of 3 pages, including this title page]

# Exhibit "A"

## Madison Middle School



**EXHIBIT "A"**  
**(Continued)**

**MADISON MIDDLE SCHOOL**  
**3400 N.W. 87 STREET**  
**MIAMI, FLORIDA 33147**

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**DEMISED PREMISES**

**LIST OF ROOMS:**

**Classroom Space:**

Building 02: Rooms 013, 014, 015 and 016 (2,729 sf)

Building 03: Rooms 020, 021, 022 and 023 (2,736 sf)

Building 09 (1<sup>st</sup> Floor): Rooms 041 and 043 (1,711 sf)

**Storage Space:**

Building 09 (1<sup>st</sup> Floor): Rooms 043A, 043B and 043C (215 sf) (located within Room 043)

**Restrooms:**

Building 02: Room 012 (190 sf)

Building 03: Room 024 (210 sf)

**Shared Space:**

Building 07 (Dining Area): Room 085 (3,671 sf)

Building 08 (Auditorium): Rooms 081 and 081A (7,614 sf)

**Administrative Office Space:**

On-Site Relocatable Units: FISH Numbers 58-0093, 58-0094 and 58-0095 (2,490 sf)

**NOTES:**

The room numbers listed herein correspond to the room numbers shown in LESSOR'S FISH drawings for Madison Middle School, dated June 12, 2015.

**OTHER:**

LESSEE shall have exclusive use of the area located on the northwest side of the School, along NW 35 Avenue, for parent and bus drop off and pick up, and LESSEE'S Point of Entrance.

LESSEE shall have exclusive use of the Parking Area for use as parking for LESSEE'S staff and visitors, and if approved in writing by the District School Administrator, LESSEE may also use the parking lot located adjacent to the Parking Area for LESSEE's staff and visitors, all in accordance with Articles II and V of the Agreement.

LESSEE shall have exclusive use of the Playfield, located on the northwest side of the School, in accordance with Articles II and V of the Agreement.

**EXHIBIT "B"**  
**TO**  
**LEASE AGREEMENT**

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**INVENTORY OF FURNITURE, FIXTURES & EQUIPMENT**

[consisting of \_\_\_\_ pages, including this title page]