

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

SUBJECT: PROPOSED AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE SCHOOL BOARD AND THE MIAMI-DADE FOUNDATION FOR EDUCATIONAL INNOVATION, INC. (“MDFEI”), A DISTRICT-MANAGED CHARTER SCHOOL LOCATED AT 1080 LA BARON DRIVE, MIAMI SPRINGS, FLORIDA, TO EXPAND THE DEMISED AREA, EXTEND THE LEASE TERM, COMPLY WITH COVID-19 RESTRICTIONS AND INSTALL THREE PORTABLE CLASSROOMS ON A TEMPORARY BASIS

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

Since August 2011, the Miami-Dade Foundation for Educational Innovation, a Florida not-for-profit corporation (“MDFEI”), has occupied a portion of the Board-owned facility located at 1080 La Baron Drive, Miami Springs, Florida (“Facility”), to operate a District-managed charter school (“School”) under a Lease Agreement (“Lease Agreement”) with the District. Due to the success of its educational program, enrollment has continued to grow, and MDFEI has continued to expand the portion of the Facility it occupies through previous amendments to the Lease Agreement, as authorized by the Board. In addition, the Board, at its meeting of October 2, 2019, authorized the construction of a 14,500 square foot twelve-classroom addition by MDFEI, at MDFEI’s sole cost and expense. The current term of the Lease Agreement expires on June 30, 2025, and no extensions are available to MDFEI without further Board action.

MDFEI has now advised that, due to delays caused in part by the current COVID-19 health crisis, construction of the twelve-classroom addition has been delayed, and it is requesting permission to install, at its sole cost and expense, three (3) portable classrooms on a temporary basis, as set forth below. MDFEI is also requesting that, given the Board’s May 20, 2020 extension of its Charter Contract term to June 30, 2030 as a High Performance Charter School (Agenda Item D-65, Board Action #120,644), the Lease Agreement also be extended to June 30, 2030. In addition, modifications must be made to the Lease

Agreement to reflect the current demised area occupied and used by MDFEI, and to address the current COVID-19 health crisis. All such modifications will require an amendment to the Lease Agreement (“Lease Amendment”).

Proposed Lease Amendment

The Deputy Superintendent/Chief Operating Officer, School Operations, recommends entering into the Lease Amendment with MDFEI to allow for the installation of three (3) portable classrooms on a temporary basis, extend the term of the Lease Agreement to June 30, 2030, include language to address the current COVID-19 health crisis, and modify the Lease Agreement to reflect the current demised area occupied and used by MDFEI. Accordingly, it is recommended that the Lease Agreement be amended to provide, substantially, for the following terms and conditions:

- In conformance with the Board’s May 20, 2020 action to extend MDFEI’s Charter Contract term to June 30, 2030 as a High Performance Charter School, the term of the Lease Agreement for the Board-owned facility located at 1080 La Baron Drive, Miami Springs, Florida, shall be extended to June 30, 2030;
- MDFEI may, at its sole cost and expense, install three (3) portable classrooms on the School campus, strictly on a temporary basis, pending completion of construction of the proposed twelve-classroom addition. The District’s Building Department shall not issue the Certificate of Occupancy for the twelve-classroom addition, and MDFEI shall not occupy or use the addition, until such time as MDFEI removes the three (3) temporary portable classrooms from the site;
- Effective with the installation of the three (3) temporary portable classrooms, and prior to construction of the 14,500 square foot twelve-classroom addition, the Lease Agreement shall reflect that the demised premises leased to MDFEI shall include, substantially, 31,008 square feet of classroom and ancillary space, seven (7) Lessee-provided portable classrooms consisting of 6,048 square feet, three (3) temporary portable classrooms consisting of 2,592 square feet, as well as non-exclusive use of the playfield area for recreational purposes and non-exclusive use of the south parking lot;
- Effective with the construction and occupancy of the twelve-classroom addition and removal of the three (3) temporary portable classrooms, the Lease Agreement shall reflect that the demised premises leased to MDFEI shall include, substantially, 45,508 square feet of classroom and ancillary space, six (6) Lessee-provided portable classrooms consisting of 5,184 square feet, as well as non-exclusive use of the playfield area for recreational purposes and non-exclusive use of the south parking lot;
- The District’s Building Department will review plans and issue permits for the

installation and subsequent removal of the three (3) temporary portable classrooms;
and

- Notwithstanding any other provisions of the Lease Agreement, MDFEI 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 currently in place or that may be implemented related to the COVID-19 crisis at all times in MDFEI's use of the demised premises.

All other terms and conditions of the Lease Agreement will remain unchanged, including:

- rent at \$1 per year;
- MDFEI shall fully reimburse the Board for its portion of the Facility's Operating Expenses, including routine building and grounds maintenance, custodial/janitorial services, trash pick-up, utilities and property insurance;
- either party shall have the right to cancel the Lease Agreement at will by giving the other party at least ninety (90) days prior written notice, provided the effective date of such cancellation does not fall during the regular school year, as defined by the Board's Elementary and Secondary School Calendar; and
- in addition to MDFEI having the option to make capital improvements within the leased space at its sole cost and expense, as currently allowed under the Lease Agreement, upon mutual agreement of the parties as to scope and cost, the District may provide certain capital improvements within the Facility serving MDFEI, with MDFEI to reimburse the District for the cost of same over an agreed to period of time, not to exceed the period remaining in the MDFEI Charter.

The proposed Lease Amendment 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 proposed Lease Amendment in its final form is attached hereto as Attachment "A".

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to execute an amendment to the Lease Agreement between the School Board and The Miami-Dade Foundation for Educational Innovation (“MDFEI”), a District-managed Charter School located at 1080 La Baron Drive, Miami Springs, Florida, to expand the demised area, extend the lease term, comply with COVID-19 restrictions and install three (3) portable classrooms on a temporary basis, and under, substantially, the terms and conditions noted within the item.

MAL:mal

NINTH AMENDMENT TO LEASE AGREEMENT

THIS NINTH AMENDMENT TO LEASE AGREEMENT (the “**Ninth Amendment**”) is made and entered into as of this _____ day of _____, 20____, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (hereinafter referred to as the “**Lessor**”), and THE MIAMI-DADE FOUNDATION FOR EDUCATIONAL INNOVATION, INC., a Florida not-for-profit corporation (hereinafter referred to as the “**Lessee**”). The Lessor and Lessee are sometimes referred to in this Ninth Amendment individually as “**Party**” and collectively as the “**Parties.**”

WITNESSETH

WHEREAS, the Lessor and Lessee entered into that certain Lease Agreement dated August 15, 2011, for Lessee’s use of portions of Lessor’s property located at 1080 LaBaron Drive, Miami Springs (the “**FACILITY**”), as amended by that certain Addendum No. 1 to Lease Agreement, dated November 3, 2011, and by that certain Addendum No. 2 to Lease Agreement, dated August 14, 2012, and by that certain Third Amendment to Lease Agreement, dated September 27, 2013, and by that certain Fourth Amendment to Lease Agreement, dated June 20, 2015, and by that certain Fifth Amendment to Lease Agreement, dated September 11, 2015, and by that certain Sixth Amendment to Lease Agreement, dated March 9, 2018, and by that certain Seventh Amendment to Lease Agreement, dated October 15, 2018; and by that certain Eighth Amendment to Lease Agreement, dated _____, 2020 (collectively, the “**Agreement**”); and

WHEREAS, the Eighth Amendment to Lease Agreement (“**Eighth Amendment**”), allows Lessee to construct a classroom addition within the playfield area of the FACILITY, in accordance with the site plan and scope of work attached as Exhibit “B” and Exhibit “E” to the Eighth Amendment (the “**Work**”); and

WHEREAS, due in part to the COVID-19 pandemic, commencement of the Work has been delayed and Lessee has requested permission to install, occupy and operate, on a temporary basis, three (3) additional Lessee-provided portable classrooms (“**Temporary Portables**”) within the FACILITY, as more specifically set forth below; and

WHEREAS, the Lessee has formulated a plan for opening its educational program at the FACILITY, 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 (“**Re-Opening Plan**”); and

WHEREAS, the Lessor and Lessee are desirous of amending certain terms and conditions of the Agreement including extending the term of the Agreement, increasing the square footage occupied by Lessee within the FACILITY and allowing Lessee to install the Temporary Portables, as more specifically set forth below; and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this Ninth Amendment in accordance with Board Action No. _____, at its meeting of _____, 20____; and

WHEREAS, Lessee has authorized all signatories to this Ninth Amendment, at a meeting duly noticed, held on _____, 20____ in accordance with its By-Laws and regulations and at which meeting a quorum was present, to execute this Ninth Amendment on its behalf, and a duly executed Resolution by Lessee's Governing Board is attached hereto and made a part hereof.

NOW, THEREFORE, for and in consideration of the conditions and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Article I (DEMISED PREMISES AND EXPANSION OF USE) of the Agreement is hereby amended to add the following language:

"The Parties acknowledge and agree that effective as of August 16, 2019, Lessee has leased from Lessor a portion of the School facility consisting of approximately 31,008 square feet of classroom and ancillary space (hereinafter defined as the "**Permanent Building Space**"), non-exclusive use of the playfield area for placement and operation of seven (7) Lessee-provided Portable Classrooms, consisting of 6,048 square feet, as well as non-exclusive use of the playfield area for recreational purposes and non-exclusive use of the south parking lot located south-east of Buildings 03 and 05, all as more particularly described in **Exhibit "A-4"** attached hereto and made a part hereof.

Effective with the Effective Date of the Ninth Amendment (as hereinafter defined), Lessee shall lease from Lessor a portion of the School facility consisting of approximately 31,008 square feet of Permanent Building Space, non-exclusive use of the playfield area for recreational purposes, for the placement and operation of the Portable Classrooms, consisting of 6,048

square feet, and for the placement and operation of the Temporary Portables, consisting of approximately 2,592 square feet, as well as the non-exclusive use of the south parking lot located south-east of Buildings 03 and 05, all as more particularly described in **Exhibit "A-5"** attached hereto and made a part hereof. In addition, effective with issuance by Lessor's Building Department of a Certificate of Occupancy, Temporary Certificate of Occupancy, Certificate of Completion, or equivalent for the Work described in Exhibit "E" of the Eighth Amendment ("**School Addition CO**"), Lessee shall lease from Lessor a portion of the School facility consisting of approximately 31,008 square feet of Permanent Building Space, non-exclusive use of the playfield area for placement and operation of up to seven (7) of the Portable Classrooms, and construction and operation of the School Addition, consisting of approximately 14,500 square feet, as well as non-exclusive use of the playfield area for recreational purposes and non-exclusive use of the south parking lot located south-east of Buildings 03 and 05, all as more particularly described in **Exhibit "A-6"** attached hereto and made a part hereof.

The Parties acknowledge and agree that each time the area occupied by Lessee is adjusted, as detailed in Exhibit "A-4", Exhibit "A-5" and Exhibit "A-6", or as otherwise provided for in this Article, the definition of DEMISED PREMISES shall automatically include the expanded or reduced premises."

3. Article II (TERM) of the Agreement is deleted in its entirety and replaced with the following language:

"The term of this Agreement shall commence August 4, 2011 (the "**Commencement Date**"), which shall also be defined as the "**Effective Date**", and shall end on June 30, 2030, unless terminated sooner as provided for in this Agreement.

In addition, for the purpose of this Ninth Amendment, the Parties acknowledge and agree that the later date of execution of this Ninth Amendment by both Parties shall serve as the effective date of the Ninth Amendment ("**Effective Date of Ninth Amendment**"), which date shall also serve as the **Commencement Date of Ninth Amendment**.

Notwithstanding the foregoing, Lessee covenants and agrees that Lessee's occupancy and use of the Temporary Portables shall not commence until a Certificate of Occupancy, Certificate of Completion, or equivalent is issued by the Lessor's Building Department for the Temporary Portables ("**Temporary Portables CO**"), which document(s) shall be attached hereto and made a

part hereof as **Exhibit “F” (“Temporary Portables CO Issuance Date”).**”

4. Article III (RENT AND OPERATING EXPENSES) of the Agreement is hereby amended to add the following language:

“The estimated amount of Operating Expenses for the period of July 1, 2019 through June 30, 2020 (the “**2019-20 Lease Term**”) shall be adjusted to reflect actual fiscal year 2019-2020 expenses, which has been established at \$7.03 per square foot. Lessee acknowledges and agrees that, as set forth in paragraph 2 of this Ninth Amendment, Lessee has occupied and used 31,008 square feet of Permanent Building Space since August 16, 2019. As such: 1) for the period of July 1, 2019 through August 15, 2019, Lessee shall pay Lessor the sum of \$17,664.31 per month in Operating Expenses, based on Lessee’s occupancy and use of 30,574 square feet of space, which consists of 24,526 square feet of Permanent Building Space within the existing School facility, and 6,048 square feet of classroom space within the Portable Classrooms; 2) for the period commencing August 16, 2019 and continuing uninterrupted until the Temporary Portables CO Issuance Date, Lessee shall pay Lessor the amount of \$21,461.68 per month as Operating Expenses, based on Lessee’s occupancy and use of 37,056 square feet of space at the School, which consists of 31,008 square feet of Permanent Building Space within the existing School facility, and 6,048 square feet of classroom space within the Portable Classrooms; and 3) for the period commencing on the Temporary Portables CO Issuance Date and continuing uninterrupted until such time as a reconciliation is conducted and issued by Lessor for fiscal year 2019-2020, Lessee shall pay Lessor the amount of \$22,874.32 per month as Operating Expenses, based on Lessee’s occupancy and use of 39,648 square feet of space at the School, which consists of 31,008 square feet of Permanent Building Space within the existing School facility, 6,048 square feet of classroom space within the Portable Classrooms, and 2,592 square feet of classroom space within the Temporary Portables.

In addition to the above, effective with issuance of the School Addition CO, the amount of Operating Expenses required to be paid by Lessee to Lessor shall be adjusted to include the School Addition, removal of the Temporary Portables, and if applicable, removal of up to seven (7) Portable Classrooms. Subsequent to issuance of the CO, Lessor shall provide written notice to Lessee with the adjusted amount of Operating Expenses, which amount shall be due to Lessor at the next monthly installment of Operating Expenses.

For avoidance of doubt, Lessee acknowledges and agrees that the amount of Operating Expenses to be paid by Lessee to Lessor shall be adjusted as and

when necessary to reflect Lessee's occupancy and use of Permanent Building Space, Portable Classrooms and Temporary Portables."

5. Article IV (USE OF DEMISED PREMISES) of the Agreement is amended to add the following language:

"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 currently in place or that may be implemented 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 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. It is understood and agreed that, by virtue of accepting possession of the DEMISED PREMISES, 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. Enforcement of these procedures is a condition precedent to 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 Lessor, at Lessor's sole option, and regardless of any other term or provision of this Agreement."

6. Article V (IMPROVEMENTS BY LESSEE) of the Agreement is amended to add the following language:

"Effective with the Effective Date of Ninth Amendment, the Lessor does hereby grant to Lessee, the right to construct the Temporary Portables at Lessee's sole cost and expense at a location agreed to by Lessor or its

designee, in advance and in writing, and as shown on Exhibit A-5. Work shall include, without limitation, any and all activities related to the acquisition and installation of the Temporary Portables and any other activities directly related thereto, as substantially set forth in **Exhibit "G"** attached hereto and made a part hereof. Lessee acknowledges and agrees that Lessee shall, at Lessee's sole cost and expense, remove the Temporary Portables from the DEMISED PREMISES and restore the area to the same or better condition as existed prior to said installation.

Notwithstanding any provisions of the Ninth Amendment or any other provisions of the Agreement, Lessee further covenants and agrees that removal of the Temporary Portables by Lessee, in full compliance with the requirements of Lessor's Building Department, shall be a condition precedent to issuance of the School Addition CO by the Lessor's Building Department, and the occupancy and use of the School Addition by Lessee. Failure of Lessee to remove the Temporary Portables as set forth above, shall be a material breach of this Agreement and may result in the immediate termination of this Agreement by Lessor, at Lessor's sole option, and regardless of any other term or provision of this Agreement."

7. Article VI (MAINTENANCE AND CUSTODIAL SERVICES) of the Agreement is amended to add the following language:

"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."

8. Article VII (INSURANCE) of the Agreement is amended to add the following language:

"Notwithstanding any other provisions of this Agreement, as a pre-condition to the Lessee re-commencing its use and occupancy of the DEMISED PREMISES, the Lessee shall provide proof of insurance with coverages acceptable to the Lessor's Office of Risk Management, containing all applicable endorsements for COVID-19 or other communicable diseases. In lieu of the above, if the Lessee's general liability policy contains a mold, fungi

or communicable disease exclusion, the Lessee shall provide documentation verifying same, and shall maintain at all times a self-insured retention with limits acceptable to the Lessor's Office of Risk Management to cover such claims or lawsuits."

9. Article X (INDEMNIFICATION AND HOLD HARMLESS) of the Agreement is amended to add the following language:

"Notwithstanding the above, in consideration for the Lessor allowing the Lessee to re-commence its use and occupancy of the DEMISED PREMISES during the COVID-19 pandemic, or in the event of the issuance of additional emergency orders by federal, state or local governments or the Lessor relating to a future emergency impacting life, health or safety of residents using the DEMISED PREMISES, the Lessee shall indemnify, hold harmless and defend the Lessor, its employees, agents and representatives, from any and all liability, damages, expenses, including attorney's fees and court costs through all appeals, claims and lawsuits arising out of or in connection with the Lessee's compliance and/or implementation of the Emergency Orders."

10. Effective as of August 16, 2019, Exhibit "A-3" to the Agreement is hereby replaced with the attached Exhibit "A-4". Effective with the Effective Date of Ninth Amendment, Exhibit "A-4" to the Agreement shall be replaced with a revised Exhibit "A-5. In addition, effective with the issuance of the School Addition CO, Exhibit "A-5" to the Agreement shall be replaced with a revised Exhibit "A-6", to reflect the square footage of the completed School Addition, the removal of the Temporary Portables, and if applicable, the removal of up to seven (7) of the Portable Classrooms, as determined by the Lessor.
11. All other terms and conditions of the Agreement, as amended, shall remain unchanged.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Ninth Amendment to be executed by their respective and duly authorized officers as of the day and year first hereinabove written.

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
Date: _____

Jaime G. Torrens
Chief of Staff
Date: _____

**TO THE LESSOR: APPROVED AS
TREASURY MANAGEMENT ISSUES:**
Office of Treasury Management

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

Treasurer
Date: _____

School Board Attorney
Date: _____

WITNESSES AS TO LESSEE:

LESSEE:
THE MIAMI-DADE FOUNDATION FOR
EDUCATIONAL INNOVATION, INC.

Print Name:_____

Print Name:_____

By:_____
Name:_____
Title: President
Date:_____