

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

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE A LEASE AGREEMENT WITH EVERGLADES COMMUNITY ASSOCIATION, INC., A NOT-FOR-PROFIT CORPORATION, FOR USE OF CLASSROOM SPACE BY THE MIGRANT EDUCATION PROGRAM, LOCATED AT 38000 S.W. 193 AVENUE, FLORIDA CITY, FLORIDA

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Background

Since February 2006, the Board has leased 1,837 square feet of office/retail space, located at 38000 S.W. 193 Avenue, Florida City, Florida (“Classroom Space”) from the Everglades Community Association, Inc. (“ECA”), pursuant to a lease agreement between the parties (“Existing Agreement”). ECA is a Florida not-for-profit corporation, which operates the Everglades Farm Worker Village (“Village”), a low-income housing project with approximately 300 school-age migrant children. The Classroom Space is utilized by the Title I Migrant Education Program (“Program”) to provide supplemental extended school day program and support services to approximately 100 at-risk students who reside within the Village. The vast majority of these students attend Laura C. Saunders Elementary, Homestead Middle, and Homestead Senior High schools, and a number attend other District special programs schools and charter schools. In addition, the Classroom Space is used to conduct evening classes and workshops for migrant farm worker adults residing within the Village. The Existing Agreement expires June 30, 2023, and Title I Administration has indicated a continuing need for the Classroom Space.

District staff contacted the landlord, who expressed a willingness to enter into a new lease agreement (“Agreement”) to allow uninterrupted District use of the facility for a one-year period (July 1, 2023 through June 30, 2024), with two (2) additional one (1) year extension periods at the Board’s sole option. Due to increased insurance and other operating costs, ECA has agreed to a five percent (5%) increase in the annual rental amount for the initial one-year lease term (July 1, 2023 through June 30, 2024). Thereafter, the rental amount will increase by two percent (2%) annually for each extension period, should the Board extend the term. Title I Administration has advised that funding from the Title I Migrant Grant will be utilized to fund the annual rental obligation.

Proposed Lease Agreement

The Title I Administration recommends entering into the Agreement with ECA for the use of the Classroom Space, under, substantially, the following terms and conditions:

- an initial term of one (1) year (July 1, 2023 through June 30, 2024);
- the District shall have the sole option of renewing the Agreement under the same terms and conditions, for two (2) successive one (1) year periods, provided the District gives written notice to ECA at least sixty (60) days prior to the expiration of the then current term;
- the annual rental rate will increase by five percent (5%) from its current \$17,038.00 to \$17,889.84 for the period of July 1, 2023 through June 30, 2024. In the event the Board elects to extend the term, the rental amount will increase by two percent (2%) annually for each extension period;
- ECA will provide and pay for all utilities except electricity, which shall be the District's responsibility;
- in the event of damage or destruction to the Classroom Space, either party may cancel the Agreement. If not cancelled, the landlord shall repair the damage at the landlord's expense;
- the District shall provide routine maintenance, repairs, and custodial services to the Classroom Space. ECA shall provide all maintenance and repairs to the office building housing the Classroom Space as well as the common areas;
- the District may cancel the Agreement at any time by providing the landlord with a minimum of six (6) months prior written notice. In addition, the District may cancel the Agreement with thirty (30) days notice in the event Federal or other governmental requirements which govern Title I programs or activities are significantly modified, or Federal funds or other funding sources for the Program are eliminated or significantly reduced, to the extent that the District is no longer able to operate its Program at this location;
- other than in the event of damage or destruction, or default on the part of the District, which default is not cured, ECA shall not have the right to cancel the Agreement;
- for purposes of the Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny all approvals under the Agreement, dealing with modifying existing improvements or constructing additional improvements within the Classroom Space, as well as routine operational issues; and

- in addition to the above, the Superintendent of Schools shall be the party designated by the Board to execute amendments to the Agreement within the authority granted to the Superintendent by the Board in the Agreement, and to grant or deny any approvals required under the Agreement, including placing ECA in default, and renewing, extending, canceling or terminating the Agreement.

The proposed Agreement has been reviewed and approved for legal sufficiency by the School Board Office of the General Counsel, as well as reviewed by the Office of Risk and Benefits Management, and found to be in compliance with risk management requirements. A copy of the Agreement in its final form is attached hereto as Exhibit "A".

RECOMMENDED:

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

- 1) finalize negotiations and execute a Lease Agreement with Everglades Community Association, Inc. ("ECA"), a not-for-profit corporation, for use of classroom space by the Migrant Education Program, located at 38000 S.W. 193 Avenue, Florida City, Florida, under, substantially, the terms and conditions noted in the agenda item;
- 2) grant or deny all approvals under this Agreement, dealing with modifying existing improvements or constructing additional improvements within the classroom space, as well as routine operational issues; and
- 3) execute any amendments to the Lease Agreement within the authority granted to the Superintendent by the Board in the Lease Agreement, and to grant or deny all approvals required under the Lease Agreement, including placing ECA in default, and renewing, extending, canceling or terminating the Lease Agreement.

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Agreement**”), is made and entered into this ____ day of _____, 2023, by and between EVERGLADES COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter referred to as the “**LESSOR**”), and 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 “**LESSEE**” and “**School Board**”). The LESSOR and LESSEE are sometimes referred to in this Agreement individually as “**Party**” and collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, LESSOR covenants that it holds the necessary legal right, title and interest in that certain property, as described below, to convey good and marketable leasehold title to LESSEE; and

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement dated May 23, 2018 (“**Existing Agreement**”), for LESSEE’S use of the DEMISED PREMISES (as hereinafter defined); and

WHEREAS, the Existing Agreement will expire on June 30, 2023; and

WHEREAS, LESSEE is desirous of continuing to lease from LESSOR and LESSOR is desirous of continuing to lease to LESSEE said property under the terms and conditions as set forth below; and

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized this Agreement in accordance with Board Action No. ____, ____, at its meeting of June 21, 2023.

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, LESSOR does hereby lease to the LESSEE the following described property, as further set forth in **Exhibit "A"**, attached hereto and made a part hereof (the “**DEMISED PREMISES**”):

The retail/office space and related facilities, including all fixtures and equipment therein and thereon provided by LESSOR, and known as: 38000 SW 103 Avenue, Suites 4 and 5, Florida City, Florida, 33034. The DEMISED PREMISES contains 909 and 928 square feet of office space respectively, for a total of 1,837 square feet, all of which is air conditioned. LESSEE shall have the right to access portions of the

office building housing the DEMISED PREMISES for the specific and limited purpose of gaining ingress to and egress from the DEMISED PREMISES.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

I.

RECITALS

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

II.

TERM

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (“**Effective Date**”). The initial term of this Agreement shall be for a period of one (1) year and, subject to the provisions of Article V, shall commence on July 1, 2023 (the “**Commencement Date**”) and end at 11:59pm on June 30, 2024, unless terminated sooner, as herein provided (“**Initial Term**”).

III.

RENTAL RATE AND PAYMENTS

The rental rate for the Initial Term of this Agreement shall be seventeen thousand eight hundred eighty-nine dollars eighty-four cents (\$17,889.84), payable to LESSOR in twelve (12) monthly installments of one thousand four hundred ninety dollars eighty-two cents (\$1,490.82), beginning on the Commencement Date and continuing each month thereafter.

In the event this Agreement is extended past the Initial Term, as set forth in Article XIV, the rental rate shall be adjusted, as provided therein.

The School Board of Miami-Dade County, Florida is exempt from Florida Sales Tax pursuant to Section 212.08(6), Florida Statutes.

IV.

USE OF DEMISED PREMISES

LESSEE shall have full control, custody, right and use of the DEMISED PREMISES at all times throughout the term of this Agreement for the operation of its educational and community programs and activities (as further detailed below). LESSEE agrees to cooperate with LESSOR concerning reasonable rules and regulations LESSOR may impose dealing with vehicular access through the portion of LESSOR’S property containing the DEMISED PREMISES, including

providing LESSOR with a list of Miami-Dade County Public Schools (“**District**”) staff regularly housed at the DEMISED PREMISES, and notifying LESSOR in advance of any event where more than ten (10) vehicles are expected.

V.

IMPROVEMENTS TO DEMISED PREMISES AND ACCEPTANCE BY LESSEE

Prior to the Commencement Date, the LESSOR shall ensure that the DEMISED PREMISES is in compliance with all applicable statutes, codes, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and all School Board rules, regulations and requirements. LESSOR shall further ensure that all plumbing, mechanical and electrical systems and equipment are in good working condition, that all lighting fixtures, bulbs and wall outlets are working, that the parking areas and driveways leading to the parking area are paved, properly striped and in conformance with the local building code, and that the building, parking area and grounds are in a safe, secure and working order. Furthermore, LESSOR shall ensure that the building common areas comply with the requirements of the Americans with Disabilities Act and the Florida Building Code.

Subject to the above, LESSEE shall occupy the DEMISED PREMISES in its “as-is” condition, with no additional tenant improvements to be provided. Subsequent to its occupancy, LESSEE may construct additional improvements within the DEMISED PREMISES, subject to the prior written approval of LESSOR, which approval shall not be unreasonably withheld. Such improvements are to be at the sole cost and expense of LESSEE.

VI.

MAINTENANCE AND CUSTODIAL SERVICES

LESSEE shall keep the DEMISED PREMISES in a neat and clean condition during the hours of its use, and shall provide routine maintenance and repair of the interior of the DEMISED PREMISES, including light bulb/ballast replacement and cleaning of air conditioning filters. LESSEE shall be responsible for and shall repair any damage caused to the DEMISED PREMISES due solely to LESSEE’S use, ordinary wear and tear excepted.

LESSEE, at its sole cost and expense, shall provide all routine custodial services to the DEMISED PREMISES, including dusting, vacuuming, interior window cleaning and trash removal.

Subject to the provisions of Article XXVII, LESSOR, at its sole cost and expense, shall repair and provide all routine maintenance to the common areas and office building housing the DEMISED PREMISES, including, but not limited to, all structural elements of the building, exterior doors and windows, the roof, common restrooms, the Heating Ventilation Air Conditioning system serving the

DEMISED PREMISES (including repair and/or replacement of compressors and condensers), general maintenance and cleaning of walkways, parking lots and grounds, and building plumbing and electrical systems.

If, after proper written notice by LESSEE, LESSOR fails to carry out any necessary maintenance or repairs within thirty (30) days of notification, or if immediate action is necessary in order to preserve the health and well being of the occupants or prevent further damage to the property, LESSEE shall have the right, but not the obligation, to either make the necessary repairs and deduct the cost of same from any rental payments or to cancel this Agreement, as provided for under Article XIII.

VII.
UTILITIES

Other than electricity, LESSOR shall provide and pay for all utilities servicing the DEMISED PREMISES, including, without limitation water, sewer and trash removal service. LESSEE shall provide and pay for all electricity used within the DEMISED PREMISES, which account shall be separately metered and placed in the name of LESSEE.

VIII.
SIGNAGE

LESSEE shall have the right, at its expense, to place one sign upon the DEMISED PREMISES, provided it complies with applicable code requirements. LESSEE shall remove said sign at the termination of the Agreement, and shall restore the area to the condition that existed prior to its installation.

IX.
NO LIABILITY FOR PERSONAL PROPERTY

LESSOR and LESSEE agree to insure or self-insure their respective interests in personal property to the extent each Party deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage of such property by any cause whatsoever. LESSOR and LESSEE hereby waive all rights of subrogation under any policy or policies they may carry on property placed or moved on the DEMISED PREMISES.

X.
INDEMNIFICATION AND HOLD HARMLESS

LESSEE does hereby agree to indemnify and hold harmless LESSOR from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the sole negligence of 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 LESSEE 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 LESSEE arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, nothing herein shall be deemed to indemnify the LESSOR from any liability or claim arising out of the negligent performance or failure of performance of the LESSOR or as a result of the negligence of any unrelated third party nor for any claim relating to the COVID-19 pandemic.

The LESSOR shall hold harmless and indemnify the LESSEE against any claim, action, loss, damage, injury, 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 this Agreement (including goods and services provided thereto) by or on behalf of the LESSOR, whether or not due to or caused in part by the negligence or other culpability of the LESSEE, excluding only the sole negligence or culpability of the LESSEE.

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 LESSEE'S sovereign immunity.

XI.

LIABILITY FOR DAMAGE OR INJURY; INSURANCE

LESSOR shall not be liable for any damage or injury which may be sustained by LESSEE or any persons or property on the DEMISED PREMISES, 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, or failure of LESSOR to perform its covenants under the Agreement.

LESSEE shall not be liable for any damage or injury which may be sustained by LESSOR or any persons or property on the DEMISED PREMISES, other than damage or injury resulting from the negligent performance or failure of performance on the part of the LESSEE, its agents, representatives or employees, or failure of LESSEE to perform its covenants under the Agreement, and in such event the LESSEE'S liability shall be subject to the limitations of Section 768.28, Florida Statutes.

The LESSEE shall maintain and provide evidence of Public Liability Insurance or an ongoing Self-Insurance program covering the LESSEE, its officers and employees, for any activities related

to this Agreement during which time the LESSEE has full control, custody and right and use of the DEMISED PREMISES.

LESSOR'S obligations and liability with respect to this Agreement shall be limited solely to LESSOR'S interest in the building, as such interest is constituted from time to time, and neither LESSOR nor any partner of LESSOR, or any officer, director, shareholder, or partner or member of any partner or member of LESSOR, shall have any individual or personal liability whatsoever with respect to this Agreement.

XII.

DAMAGE OR DESTRUCTION

Notwithstanding provisions of Article XIII, in the event all or portions of the DEMISED PREMISES or the balance of the office building housing the DEMISED PREMISES should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the DEMISED PREMISES are rendered un-tenantable or unfit for the purpose of LESSEE (as defined solely by the LESSEE'S Department of Safety), either Party may cancel this Agreement by giving written notice to the other Party. However, if neither Party shall exercise the foregoing right of cancellation within thirty (30) days after the date of such destruction or damage, LESSOR shall cause the DEMISED PREMISES to be repaired and placed in tenantable condition within ninety (90) days from the date of such damage or destruction, or such other period of time as mutually agreed to by the Parties. Should LESSOR fail to repair and render the DEMISED PREMISES tenantable within the stipulated time frame from the date of damage or destruction, then LESSEE shall have the sole right to immediately cancel this Agreement without penalty.

In the event of cancellation, the rent shall only be paid to the date of such damage or destruction. During any time that the DEMISED PREMISES, or a percentage portion thereof (as defined solely by the LESSEE'S Department of Safety) are rendered un-tenantable due to fire, windstorm or other casualty, LESSEE'S responsibilities under this Agreement, including the payment of rent, shall be abated, based on the percentage of the entire DEMISED PREMISES which have become un-tenantable.

XIII.

CANCELLATION

Notwithstanding, the provisions of Articles XII and XXVI, LESSEE shall also have the right to cancel this Agreement at any time and without penalty, by providing LESSOR with written notice at least six (6) months prior to the effective date of said cancellation. In addition, the LESSEE shall have the right to cancel the Agreement with thirty (30) days written notice in the event Federal or

other governmental requirements which govern Title I programs or activities (LESSEE'S "Program(s)") are significantly modified, or Federal funds or other funding sources for these Programs are eliminated or significantly reduced, to the extent that the LESSEE is no longer able to operate its Programs at this location.

XIV.

OPTION TO EXTEND THE TERM

LESSEE shall have the sole option to extend the term of this Agreement, under the same terms and conditions, for two (2) successive one (1) year periods from the expiration of the Initial Term or then current term, by giving LESSOR notice in writing at least sixty (60) days prior to the expiration of the then current term. The rental rate for each renewal period shall be adjusted by a two percent (2%) increase over the previous year's rental rate. The Parties acknowledge and agree that extension of the term shall be accomplished through the execution by the Parties of an amendment to this Agreement.

XV.

PEACEFUL POSSESSION

Subject to the terms, conditions and covenants of this Agreement, LESSOR agrees that LESSEE shall have and may peaceably have, hold, and enjoy the DEMISED PREMISES without hindrance or molestation by LESSOR. However, subject to the above, LESSOR shall have the right, from time to time, to adopt reasonable rules and regulations dealing with LESSEE'S use and occupancy of the DEMISED PREMISES, provided such rules do not preclude use of the DEMISED PREMISES by LESSEE for its Programs, including educational and community programs and activities.

XVI.

LESSOR'S RIGHT OF ENTRY

Upon reasonable notice and after first receiving permission from the on-site District administrator, and in compliance with the provisions of Article XXVII, LESSOR, or any of its agents, representatives or employees, shall have the right to enter upon said DEMISED PREMISES during LESSEE'S period of use to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of said property, and fulfillment of LESSOR'S obligations as specified in Article VI, provided such activities do not interfere with LESSEE'S ability to use the DEMISED PREMISES for the purpose intended.

XVII.

SURRENDER OF PREMISES

LESSEE agrees to surrender to LESSOR, at the expiration, termination or cancellation of this Agreement or any extension thereof, said DEMISED PREMISES 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. LESSEE may remove its built-in or attached furniture, fixtures and equipment, provided such removal does not unreasonably damage the finishes or impact the structural integrity of the DEMISED PREMISES.

XVIII.

ASSIGNMENT, SUBLETTING AND SUBORDINATION

LESSEE shall not assign or sublet, in whole or in part, transfer, mortgage, pledge, hypothecate or otherwise dispose of this Agreement during the term hereof including any extensions or renewals, without the prior written approval of LESSOR, which approval shall not be unreasonably withheld.

LESSEE agrees that this Agreement is now, and will continue to be, subject and subordinate to all present or future mortgages which LESSOR may enter into which encumber the DEMISED PREMISES.

XIX.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The LESSEE and LESSOR shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, 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 be 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 and this Agreement.

XX.

AMENDMENTS

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 both LESSOR and LESSEE and shall be incorporated as part of this Agreement.

XXI.

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 Miami-Dade County, Florida.

XXII.

SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment 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 the deletion thereof, provided to do so would not render interpretation of the lease provisions ambiguous or a nullity.

XXIII.

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 LESSEE:

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 Facilities, Design & Construction
Attention: Chief Facilities Design & Construction Officer
1450 N.E. Second Avenue, Room 923
Miami, Florida 33132
Fax: 305-995-1918
E-mail: RPerez6@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Office of the General Counsel
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: School Board General Counsel
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net and ACraft@dadeschools.net

In the case of notice or communication to LESSOR:

Everglades Community Association, Inc.
19308 SW 380 Street
Florida City, Florida 33034
Office: (305) 242-2142
Fax: (305) 242-2143
E-mail: stevekirk@ruralneighborhoods.org

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the LESSEE to grant or deny all approvals under this Agreement, dealing with modifying existing improvements or constructing additional improvements within the DEMISED PREMISES, as well as routine operational issues.

D. In addition to the above, the Superintendent of Schools shall be the party designated by the LESSEE to execute amendments to the Agreement within the authority granted to the Superintendent by the School Board in this Agreement, and to grant or deny any approvals required under this Agreement, including placing LESSOR in default, renewing or extending the Agreement, and canceling or terminating the Agreement as provided herein.

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, citizenship status, mental or physical handicap, genetic information, age, political beliefs, sexual orientation, gender, gender identification, marital status, social and family background, linguistic preference, pregnancy or as otherwise provided by law, in the use of the DEMISED PREMISES and improvements thereof. 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.

WAIVER

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

XXVI.

DEFAULT

Notwithstanding the provisions of Article XIII, unless otherwise provided to the contrary in this Agreement, LESSEE shall provide LESSOR with written notice specifying any failure to perform or comply with the terms and conditions contained herein to be performed by LESSOR. If LESSOR fails to cure said default within thirty (30) days of receipt of written notice, or does not provide LESSEE with a written response within thirty (30) days after receiving written notification, indicating the status of LESSOR'S resolution of the violations and providing for a mutually agreeable schedule to correct all deficiencies, LESSEE shall have the right to cancel this Agreement, without penalty, upon ten (10) days additional written notice.

Unless otherwise provided to the contrary in this Agreement, LESSOR shall provide LESSEE with written notice specifying any failure to perform or comply with the terms and conditions contained herein to be performed by LESSEE. If LESSEE fails to cure said default within thirty (30) days of receipt of written notice, or does not provide LESSOR with a written response within thirty (30) days after receiving written notification, indicating the status of LESSEE'S resolution of the violations and providing for a mutually agreeable schedule to correct all deficiencies, LESSOR shall have the right to cancel this Agreement, without penalty, upon ten (10) days additional written notice.

XXVII.

BACKGROUND SCREENING REQUIREMENTS AND COMPLIANCE WITH SCHOOL CODE

In accordance with the requirements of sections 1012.32, 1012.465, and 435.04, Florida Statutes (2004) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005),
Lease Agreement -Everglades Community Association, Inc./ **FINAL 05.05.23**

effective September 1, 2005, LESSOR agrees to certify under oath and penalty of perjury, in accordance with **Exhibit "B"** (Sworn Statement Pursuant to Sections 1012.32, 1012.465, and 435.04, Florida Statutes (2004) and HB 1877, The Jessica Lunsford Act (2005)) which is attached hereto and made a part hereof, that LESSOR and all of its employees who provide or may provide services under this Agreement have completed all background screening requirements as outlined in the above-referenced statutes. LESSOR agrees to bear any and all costs associated with acquiring the required background screenings. LESSOR agrees to require all its affected employees to sign a statement, as a condition of employment with LESSOR in relation to performance under this Agreement, that the employee will abide by the terms and notify LESSOR/Employer of any arrest or conviction of any offense enumerated in s. 435.04, Florida Statutes within forty-eight (48) hours of their occurrence. LESSOR agrees to provide the LESSEE with a list of all of its employees who have completed background screening as required by the above-referenced statutes and meet the statutory requirements contained therein. LESSOR agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. LESSOR further agrees to notify the LESSEE immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any disqualifying offense. Failure by LESSOR to notify the LESSEE of such arrest or conviction within forty-eight (48) hours of being put on notice by the employee and within five (5) days of its occurrence, shall constitute grounds for immediate termination of this contract by the LESSEE. The Parties further agree that failure by LESSOR to perform any of the duties described in this paragraph shall constitute a material breach of the contract entitling the LESSEE to terminate this Agreement immediately with no further responsibility to make payment or perform any other duties under this Agreement.

LESSOR agrees to comply with all sections of the Florida K-20 Education Code, Title XLVIII, Florida Statutes as it presently exists, and further as it may be amended from time to time. Further LESSOR agrees that failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Agreement and may result in the termination of this Agreement by the LESSEE, without penalty.

XXVIII.

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. The LESSOR understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The LESSOR shall keep and maintain public records required by the LESSEE to perform the service. The LESSOR shall keep records to show its compliance with this Agreement. The LESSOR'S contractors and subcontractors must make available, upon request of the LESSEE, 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 LESSOR 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 LESSEES custodian of public records, the LESSOR shall provide the LESSEE 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 LESSOR 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 LESSOR does not transfer the records to the LESSEE. The LESSOR, 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 LESSOR, upon completion of the Agreement, shall transfer, at no cost to the LESSEE, all public records in possession of the LESSOR or keep and maintain public records required by the LESSEE to perform the service. If the LESSOR transfers all public records to the LESSEE upon completion of the Agreement, the LESSOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LESSOR keeps and maintains public records upon completion of the Agreement, the LESSOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the LESSEE, upon request from the LESSEE'S custodian of public records, in a format that is compatible with the information technology systems of the LESSEE.

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

IF THE LESSOR 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

XXIX.

MISCELLANEOUS PROVISIONS

- A. RECORDATION:** This Agreement may not be recorded, in any form, by either Party.
- B. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- C. COUNTERPARTS:** This Agreement and any future amendments, may be executed 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.
- D. 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.
- E. BROKERS:** LESSOR 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 LESSOR ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the LESSEE ("**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.
- F. SOVEREIGN IMMUNITY:** No provision contained in this Agreement shall be deemed a waiver of the LESSEE'S sovereign immunity.

XXX.

LEGAL FEES AND COURT COSTS

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

XXXI.

ENTIRE AGREEMENT

This Agreement and all Exhibits attached hereto constitute the entire agreement between the LESSOR and LESSEE 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 the year first hereinabove written.

WITNESSES AS TO LESSOR:

Print Name: _____

Print Name: _____

LESSOR:

EVERGLADES COMMUNITY
ASSOCIATION, INC., a Florida not-for-profit
corporation

By: _____

Date: _____

WITNESSES AS TO THE BOARD:

Print
Name: _____

Print
Name: _____

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

Office of Risk and Benefits Management

Risk and Benefits Officer
Date: _____

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

Office of Treasury Management

Treasurer
Date: _____

BOARD:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____

Dr. Jose L. Dotres
Superintendent of Schools

Date: _____

RECOMMENDED:

Raul F. Perez
Chief Facilities Design & Construction Officer
Date: _____

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

School Board General Counsel
Date: _____

EXHIBIT "A"

**LEASE AGREEMENT BY AND BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY,
FLORIDA, AND EVERGLADES COMMUNITY ASSOCIATION, INC.**

DEMISED PREMISES

Effective with the Commencement Date of this Agreement, a depiction of the property leased to LESSEE under this Agreement is attached hereto as Exhibit "A"

[consisting of two (2) pages, including this title page]

EXHIBIT "B"

LEASE AGREEMENT BY AND BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AND EVERGLADES COMMUNITY ASSOCIATION, INC.

BACKGROUND SCREENING REQUIREMENTS

In accordance with the requirements of sections 1012.32, 1012.465, and 435.04, Florida Statutes (2004) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, LESSOR agrees to certify under oath and penalty of perjury, its compliance with the Background Screening Requirements, attached hereto as Exhibit "B"

[consisting of four (4) pages, including this title page]

Exhibit "B"

**SWORN STATEMENT PURSUANT TO SECTION 1012.465,
FLORIDA STATUTES AS AMENDED BY
HB 1877, THE JESSICA LUNSFORD ACT**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A
NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to The School Board of Miami-Dade County, Fl.,
(Hereinafter "Board" or "School Board") by _____

(Print individual's name and title)

for _____
(Print Name of entity submitting sworn statement)

whose business address is

and its Federal Employer Identification Number (FEIN) _____.
If the entity has no FEIN, include the Social Security Number (SSN) of the individual
signing this sworn statement and so indicate.

2. I, _____ am duly authorized to make this
(Print individual's name and title)
sworn statement on behalf of _____
(Print Name of entity submitting sworn statement)

3. I understand that during the 2005 Legislative Session, House Bill 1877, The Jessica Lunsford Act (hereinafter "The Act" or "Act") was passed and approved by Governor Bush on May 2, 2005, with an effective date of September 1, 2005.

4. I understand that the Act amends the background screening requirements of section 1012.465, Florida Statutes (2004) for all non-instructional school district employees or "contractual personnel" by requiring all non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present to undergo and pass "level 2 background screening," and further I understand the Act defines

“contractual personnel” to include any vendor, individual, or entity under contract with the Board.

5. I understand that pursuant to section 1012.465, Florida Statutes as amended by the Act, non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in sections 1012.32 and 435.04, Florida Statutes.
6. I understand that as a _____ (eg. a private bus
Type of entity
service contractor) all contractual personnel, as defined in section 1012.465, Florida Statutes, must meet level 2 screening requirements as outlined in sections 1012.32 and 435.04, Florida Statutes in order to do business with The School Board of Miami-Dade County, Florida.
7. I understand that “level 2 screening requirements,” as defined in sections 1012.32 and 435.04, Florida Statutes means that fingerprints of all contractual personnel must be obtained and submitted to the Florida Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing.
8. I understand that the School Board will implement local procedures to comply with level 2 screening requirements, as defined in sections 1012.32 and 435.04. I understand that my company must comply with these local procedures as they are developed.
9. I understand that any costs and fees associated with the required background screening will be borne by my company.
10. I understand that any personnel of the contractor found through fingerprint processing and subsequent level 2 background screening to have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense outlined in Section 435.04, Florida Statutes (or any similar statute of another jurisdiction), shall not be permitted to come onto school grounds or any leased premises where school-sponsored activities are taking place when students are present, shall not be permitted direct contact with students, and shall not be permitted to have access to school district funds.
11. I understand that the failure of any of the company’s or my affected personnel to meet level 2 screening standards as required by section 1012.465, Florida Statutes, may disqualify my company from doing business with The School Board of Miami-Dade County, Florida.
12. I hereby certify that the foregoing statement is true and correct in relation to the company for which I am submitting this sworn statement. I further certify that this statement is being given knowingly and voluntarily by me on behalf of my company.

The company submitting this sworn statement agrees to be bound by the provisions of SECTIONS 1012.32, 1012.465, AND 435.04 OF THE FLORIDA STATUTES AS AMENDED BY HB 1877, THE JESSICA LUNSFORD ACT 2005.

I CERTIFY THAT THE SUBMISSION OF THIS FORM TO THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ON BEHALF OF THE COMPANY IDENTIFIED IN PARAGRAPH ONE (1) ABOVE BINDS THE COMPANY TO FULLY COMPLY WITH THE BACKGROUND SCREENING REQUIREMENTS OF SECTIONS 1012.32, 1012.465, AND 435.04, FLORIDA STATUTES.

(Signature)

Sworn to and subscribed before me this _____ day of _____ 20____.

Personally known _____

OR Produced Identification _____

Notary Public State of _____

(Type of Identification)

My commission expires _____

(Printed typed or stamped commissioned name of notary public)