

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

**SUBJECT: AUTHORIZE THE SUPERINTENDENT TO FINALIZE
NEGOTIATIONS AND EXECUTE A JOINT USE
AGREEMENT WITH THE CITY OF CORAL GABLES FOR
JOINT USE OF THE CORAL GABLES PREPARATORY
ACADEMY PARKING LOT AND PHILLIPS PARK**

COMMITTEE: FACILITIES AND CONSTRUCTION

**LINK TO STRATEGIC
PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES**

Background

Since 2006, the City of Coral Gables ("City") and the School Board ("Board") have collaborated through an Education Compact to enrich, expedite, and enhance education. In 2010, Coral Gables Elementary located at 39 Zamora Avenue, Coral Gables, became Coral Gables Preparatory Academy ("School"), by expanding into a K through 8 school. The District has historically requested the use of Phillips Park ("Park") located adjacent to the School at 90 Menores Avenue, for physical education and sports activities. The Board and City are mutually interested in providing the Park, for the use and benefit of the School during School hours ("Regular School Hours"), and for the City to have use of the School's parking lot ("Parking Lot") for the use and benefit of Park patrons during non-School hours.

Proposed Board Action

To facilitate this mutually beneficial arrangement, staff is recommending that the Board authorize the Superintendent to finalize negotiations and execute a Joint Use Agreement with the City, under terms and conditions acceptable to the Board, upon a determination by the Board that such an agreement would be in the best interest of the Board.

Proposed Joint Use Agreement

Subject to approval by the Board, the proposed Joint Use Agreement ("Agreement") with the City will include, substantially, the following terms and conditions:

- the Board shall have non-exclusive use of the Park for educational, recreational, and extracurricular activities for students on days when the School is in session, during Regular School Hours;
- the Board's use of the Park shall be limited to approximately forty (40) students at any one time, with the Board providing sufficient personnel to supervise the students;

- the City shall have non-exclusive use of the Parking Lot for public parking on weekdays beginning after Regular School Hours, and on weekends and Board Holidays beginning at 8:00 a.m. until the City's designated closing time;
- the term of the Agreement shall be for a period of five (5) years, commencing on the Commencement Date;
- the term of the Agreement may be extended, by mutual agreement, for one (1) additional term of five (5) years;
- the City and Board shall pay each to the other as consideration the sum of one dollar (\$1.00) per year in advance, or the Parties may opt to pay the full rental amount of \$5.00 for the Term in advance;
- either Party may cancel the Agreement by providing the other Party with a minimum of thirty (30) days' prior written notice;
- any such cancellation shall become effective only upon completion of the School year then in effect;
- the City shall keep all recreational facilities and equipment located on the Park in a safe, clean, and working condition, and the Board shall keep all improvements located on the Parking Lot in a safe, clean, and working condition;
- the City shall comply with all applicable federal, state, and local laws, regulations, and requirements governing the application of herbicides and pesticides within the Park;
- the City shall provide proper supervision of the Parking Lot during its period of use, and the Board shall provide proper supervision of the Park during its period of use using trained and qualified personnel;
- 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 or waivers required by the Agreement dealing with construction of recreational improvements, modifying the areas or periods of use, allowing the City to hold City Events on the Parking Lot, or any other routine operational issues; and
- the Superintendent of Schools shall also be the party designated by the Board to execute amendments to the Agreement within the authority granted to the Superintendent in the Agreement, and to grant or deny any approvals required, including placing the City in default, or renewing, extending, canceling, or terminating the Agreement.

The proposed Joint Use Agreement has been reviewed by the School Board Office of the General Counsel 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 Agreement in its final form is attached hereto.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, upon a determination by the Board that such an agreement would be in the best interest of the Board, authorize the Superintendent to:

- 1) execute a Joint Use Agreement between the School Board and the City of Coral Gables for use by the Board of Phillips Park, located at 90 Menores Avenue, Coral Gables, and for use by the City of the parking lot at Coral Gables Preparatory Academy, located at 39 Zamora Avenue, Coral Gables, substantially in conformance with the terms and conditions set forth in the agenda item;
- 2) grant or deny any and all approvals required under the Joint Use Agreement, including, but not limited to, dealing with construction, modifications to the areas or periods of use, special events, as well as routine operational issues; and
- 3) execute amendments to the Joint Use Agreement within the authority granted him by the Board in the Agreement, and to grant or deny any approvals required under the Agreement, including placing the City in default, and renewing, extending, canceling or terminating the Agreement.

NR:nr

JOINT USE AGREEMENT

(Coral Gables Preparatory Academy/Phillips Park)

THIS JOINT USE AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 20____, by and between the **CITY OF CORAL GABLES**, a Florida municipal corporation (hereinafter referred to as the "**CITY**"), 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 to the "**BOARD**"). The CITY and the BOARD are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**".

WITNESSETH

WHEREAS, the BOARD owns and has under its jurisdiction certain real property, known as Coral Gables Preparatory Academy ("**School**"), located at 39 Zamora Avenue, Coral Gables, Florida, 33134, also described as Folio # 03-4108-009-3870; and

WHEREAS, the CITY owns and operates Phillips Park, a public recreational facility ("**Park**"), located at 90 Menores Avenue, Coral Gables, 33134, also described as Folio #03-4108-009-3850, which provides outdoor amenities and programming for community use; and

WHEREAS, the BOARD and CITY are mutually interested in and concerned with providing the Park for the use and benefit of the students of Miami-Dade County Public Schools ("**District**"), and the School's parking lot (Parking Lot "A" referred to herein as the "**Parking Lot**"), for the use and benefit of the CITY'S Park patrons; and

WHEREAS, the BOARD has agreed to allow the CITY to use the Parking Lot under the terms and conditions outlined in this Agreement; and

WHEREAS, the CITY has agreed to allow the BOARD to use the Park under the terms and conditions outlined in this Agreement; and

WHEREAS, the BOARD and CITY have each formulated a plan for its use of the Park and Parking Lot, respectively,

WHEREAS, the City of Coral Gables Commission by the adoption of Resolution No. _____, at its meeting of _____, 20____, approved this Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized this

Agreement in accordance with Board Item No. F-____, Board Action No. _____, at its meeting of _____, 20____.

NOW, THEREFORE, for and in consideration of the Sum of Five Dollars, 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:

I.

RECITALS

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

II.

TERM; CONSIDERATION

The Effective Date of this Agreement shall be the date on which the last of the Parties initials or executes this Agreement (“**Effective Date**”), which date shall also serve as the commencement date (“**Commencement Date**”). The term of this Agreement shall be for a period of five (5) years, commencing on the Commencement Date (“**Term**”). The CITY and BOARD, through their respective designees, shall confirm the Commencement Date in a separate written instrument, which shall be attached hereto and become a part hereof as **Exhibit “A”**.

The CITY and BOARD shall pay each to the other as consideration for use and occupancy of the Parking Lot and Park throughout the term of this Agreement, and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, without demand, beginning on the Commencement Date, and on the anniversary date of the Commencement Date each year thereafter. The Parties may, at their option, pay the full rental amount of \$5.00 for the Term, or any remaining amount, in advance.

III.

PREMISES TO BE JOINTLY USED; MODIFYING PREMISES

The Parties agree that, effective with the Commencement Date of this Agreement (as such term is defined above), the Parking Lot shall be made available for use by the CITY under the terms and conditions set forth herein, and the Park shall be made available for use by the School under the terms and conditions set forth herein. The

Parking Lot and Park are as set forth in **Exhibit "B"**, attached hereto and made a part hereof, and are hereinafter collectively referred to as the **"Demised Premises"**.

IV.

USE OF DEMISED PREMISES; SUPERVISION

A. USE OF PARKING LOT; SUPERVISION

The Parking Lot shall only be used by the CITY for public parking (such prohibited uses include, but are not limited to, food trucks or other commercial vehicle parking, overnight parking or storage of vehicles). The CITY shall accept use of the Parking Lot in their "as-is", "where-is" condition as of the Commencement Date of this Agreement, including with respect to their environmental condition, subject to all easements, covenants and other encumbrances and limitations of record. The CITY acknowledges that the Parking Lot (in whole or in part) may be closed from time to time to allow for maintenance or construction activities, and any such closure shall be coordinated in advance when possible.

In addition, the CITY acknowledges and agrees that the Parking Lot may not provide sufficient parking to address the needs of all Park patrons. In the event the BOARD or School Administrator should receive communications (either oral or written) from concerned individuals pertaining to parking issues, the CITY acknowledges and agrees that it shall retain responsibility to address these concerns, and the BOARD shall have no liability or responsibility in this regard.

In that regard, the CITY may post signs in the Parking Lot, subject to review and approval by the School Administrator (as such term is defined below) as to quantity and placement of same. The CITY shall promptly notify the BOARD or its designee of any and all notices or communications received from any jurisdictional entity related to any incidents that occurred on or near the Parking Lot during the CITY'S daily Period of Use of Parking Lot, in relation to any health and safety issues or law enforcement incidents. Thereafter, the CITY shall provide the BOARD with all information reasonably requested by the BOARD or its designee and shall cooperate with the BOARD in implementing any policies or procedures required to mitigate any further incidents of this nature.

Other than as specified elsewhere in this Agreement, the BOARD shall have full control, custody, right and use of the Parking Lot, during regular school hours (**"Regular**

School Hours”), as established from time-to-time by the School Principal or designee (**“School Administrator”**), on regular school days during the academic school year as established each year through the District’s Elementary and Secondary School Calendar (**“School Calendar”**). In accordance with the scheduled programmatic access afforded to the CITY under this Agreement, the CITY shall have non-exclusive use of the Parking Lot on weekdays beginning after Regular School Hours, as determined by the School Administrator, and ending at the CITY’S designated closing time, but in no event later than the standard closing time for CITY Parks, and on weekends and BOARD Holidays (as established in the School Calendar) beginning at 8:00 a.m., and ending at the CITY’S designated closing time, but in no event later than the standard closing time for CITY Parks, or as otherwise agreed to in writing by the Parties (**“City’s Period of Use of Parking Lot”**).

Notwithstanding the foregoing, the BOARD, at its sole option, may use the Parking Lot, or portions thereof, from time-to-time, at times and days that would otherwise be within the City’s Period of Use of Parking Lot, as may be required for special events and functions, including but not limited to, community meetings, athletic or other practices, home games, pre-scheduled tournaments, intramural sports, extracurricular athletics/activities, and summer school, during which time it shall have full control, custody, right and use of same. In that event, the School Administrator or designee shall so notify the CITY’S Recreation Director (**“Recreation Director”**) or designee with a minimum of forty-eight (48) hours advance written notice.

Notwithstanding the above, the CITY acknowledges that because of the need to ensure the safety of District staff, students and faculty, maintain the security and integrity of School building and grounds, and prevent vandalism of same, the School Administrator, upon a minimum of seven (7) calendar days prior written notice, reserves the unilateral right to limit or alter the means by which the CITY may access and use the Parking Lot.

B. USE OF PARK; SUPERVISION

During the Board's Period of Use of Park (as such term is defined below), the Park shall be utilized by the BOARD for educational, recreational, and extracurricular activities

for students of the District, and for no other purpose. Such use shall be non-exclusive, recognizing the public nature of the Park. The Board's use of the Park shall be limited to approximately forty (40) students at any one time. The Board shall provide sufficient personnel to supervise the students and shall comply with all applicable supervision, safety, and security requirements during such use. The BOARD acknowledges that the Park (in whole or in part) may be closed from time to time to allow for maintenance or construction activities, and any such closure shall be coordinated in advance when possible.

The BOARD shall accept use of the Park in its "as-is", "where-is" condition as of the Commencement Date of this Agreement), including with respect to their environmental condition, subject to all easements, covenants and other encumbrances and limitations of record. The BOARD shall provide proper supervision of the Park during its period of use using trained and qualified personnel stationed at the Park, and keep the Park safe and secure.

The BOARD covenants and agrees at the end of the BOARD'S daily Period of Use of Park, it shall remove (or store at a designated location within the Park if so approved by the CITY), any personal property or recreational equipment that it brought to the Park for its use, and shall promptly vacate the Park. The BOARD shall promptly notify the CITY or its designee of any and all notices or communications received from any jurisdictional entity related to any incidents that occurred on or near the Park during the BOARD'S daily Period of Use of Park, in relation to any health and safety issues or law enforcement incidents. Thereafter, the BOARD shall provide the CITY with all information reasonably requested by the CITY or its designee and shall cooperate with the CITY in implementing any policies or procedures required to mitigate any further incidents of this nature.

Other than as specified elsewhere in this Agreement, the CITY shall have full control, custody, right, and use of the Park during regular Park operating hours ("**Regular City Hours**"), as established from time-to-time by the CITY. In accordance with the scheduled programmatic access afforded to the BOARD under this Agreement, the BOARD shall be permitted to use the Park on days when the School is in session, as established in the School Calendar, during Regular School Hours, as determined by the School Administrator ("**Board's Period of Use of Park**"). The CITY retains overall

ownership, control, and public operation of the Park, and the BOARD'S use during this period shall be scheduled in advance for school activities without conferring exclusive possession, control, or leasehold rights to the BOARD.

Notwithstanding the above, the BOARD acknowledges that because of the need to ensure the safety of the public and Park staff, maintain the security and integrity of Park building and grounds, and prevent vandalism of same, the Recreation Director, upon a minimum of seven (7) calendar days prior written notice, reserves the unilateral right to limit or alter the means by which the BOARD may access and use the Park.

C. USE OF DEMISED PREMISES FOR SPECIAL EVENTS

CITY USE OF PARKING LOT: Notwithstanding the foregoing or anything contained herein to the contrary, the BOARD acknowledges that the CITY may seek use of the Parking Lot, from time-to-time, for special CITY sponsored events and functions (“**City Event**”) that require substantial advance planning and preparation. In that event, the CITY is to make written application to the BOARD pursuant to Article XVI hereof at least thirty (30) days in advance of the proposed City Event, indicating the nature of the event, event duration, impact on the School's use of the Parking Lot and any other relevant information as may be required by the BOARD. The BOARD, acting through its authorized designee, shall respond in writing with all due haste, and approval of such City Event shall not be unreasonably withheld. The CITY'S use of the Parking Lot shall be under the same terms and conditions of this Agreement.

The CITY shall remove all refuse or debris generated by any City Event and shall repair all damage to the Parking Lot or elsewhere on the School campus that occurred during such event, and the Parking Lot shall be made safe and usable for the School prior to the BOARD'S next period of use. Other than as concerns the Parking Lot, the CITY in connection with the City Event, may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the City Event. The CITY may not use the Parking Lot for portable band shells or the installation of tents, portable toilets, food trucks, equipment or other such facilities.

When using the Parking Lot for a City Event, the CITY shall ensure that any and all vendors, operators or providers of services occupying the Parking Lot, shall do so only with the CITY'S formal approval, and under the CITY'S supervision and control. All such

vendors, operators and service providers shall be required to maintain a policy of general liability insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the City Event, or as otherwise required by the District's Office of Risk and Benefits Management.

A Certificate of Insurance shall be provided to the BOARD a minimum of ten (10) days prior to the City Event, and the Certificate of Insurance shall name "The School Board of Miami-Dade County, Florida, and its members, officers and employees" as an additional insured on all liability coverages except Worker's Compensation Insurance. The CITY shall further ensure that adequate supervision and security is provided during the City Event to address vehicular traffic, parking, security and crowd control issues.

BOARD USE OF PARK: Notwithstanding the foregoing or anything contained herein to the contrary, the CITY acknowledges that the BOARD may seek use of the Park, from time to time, for special District or School sponsored events and functions ("**Board Event**") that require substantial advance planning and preparation. In that event, the BOARD is to make written application to the CITY pursuant to Article XVI hereof at least thirty (30) days in advance of the proposed Board Event, indicating the nature of the event, event duration, impact on the CITY'S use of the Park and any other relevant information as may be required by the CITY.

The BOARD shall remove all refuse or debris generated by any Board Event and shall repair all damage to the Park that occurred during such event, and the Park shall be made safe and usable for the Park prior to the CITY'S next period of use. In connection with the Board Event, the BOARD may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the Board Event. The BOARD will make every reasonable effort to confine the use of portable band shells or the installation of tents, portable toilets, equipment or other such facilities to the School or nearby BOARD-owned lands.

When using the Park for a Board Event, the BOARD shall ensure that any and all vendors, operators or providers of services occupying the Park, shall do so only with the District's formal approval, and under the District's supervision and control. All such vendors, operators and service providers shall be required to maintain a policy of general

liability insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the Board Event, or as otherwise required by the CITY.

A Certificate of Insurance shall be provided to the CITY a minimum of ten (10) days prior to the Board Event, and the Certificate of Insurance shall name the "City of Coral Gables" as an additional insured on all liability coverages except Workers' Compensation Insurance. The BOARD shall further ensure that adequate supervision is provided during the Board Event to address vehicular traffic, parking, security and crowd control issues.

D. ADDITIONAL RULES AND REGULATIONS FOR USE OF DEMISED PREMISES

The BOARD and CITY may promulgate and enforce reasonable rules and regulations governing its use of the Demised Premises during their respective Period(s) of Use, and shall.

The sale or consumption of alcoholic beverages at any time, including City Events, is expressly prohibited on the Parking Lot or elsewhere on the School. Violation of this provision shall be deemed a material breach of this Agreement, and the BOARD may, in its sole discretion, place the CITY in default. Material Breach shall be defined as a default requiring immediate cure.

The Parties shall not commit nor permit any violations of applicable laws, rules and regulations of the BOARD, including BOARD Policies, CITY, County, State, or Federal Government upon the Demised Premises or elsewhere on the School.

V.

IMPROVEMENTS TO DEMISED PREMISES BY CITY AND BOARD

A. IMPROVEMENTS TO PARKING LOT BY THE BOARD

The BOARD may make improvements within the Parking Lot, at its sole option, provided such improvements do not materially impact the CITY'S use of the Parking Lot under this Agreement. In the event the BOARD seeks to make improvements in the Parking Lot during the term of this Agreement, the BOARD agrees to cooperate in every

reasonable way with the CITY, including coordination through the Joint Use Committee, to minimize the disturbance to the peaceful possession and use of the Parking Lot by the CITY during any such construction activities.

B. IMPROVEMENTS TO THE PARK BY THE CITY

The CITY may make improvements within the Park, at its sole option, provided such improvements do not materially impact the BOARD'S use of the Park under this Agreement. In the event the CITY seeks to make further improvements in the Park during the term of this Agreement, the CITY agree to cooperate in every reasonable way with the BOARD, including coordination through the Joint Use Committee, to minimize the disturbance to the peaceful possession and use of the Park by the BOARD during any such construction activities.

C. IMPROVEMENTS TO THE OTHER PARTY'S PROPERTY

The BOARD and CITY may request permission to construct additional recreational or other improvements on the other Party's site (as set forth in Article III), which approval may be granted at the property owner's sole authority. Unless otherwise agreed to by the Parties, all such construction shall be at the requesting Parties sole cost and expense. In conformance with Articles VI, VII and XVII of this Agreement, prior to initiating any such project on the other Party's site, the Parties shall, at a minimum, assign responsibility for Maintenance, Utilities and for Damage or Destruction for the proposed improvement. Once determined and agreed to, Exhibit "B" shall be modified, as necessary, to reflect these responsibilities, as well as the proposed improvement, as provided for in Article III.

Each Party shall be responsible for generating construction documents, securing any permits, zoning variances, regulatory or governmental approvals, and license and/or use approvals which may be required for the construction of any improvement on the other Party's property. Work shall commence only after issuance of proper permits, in conformance with the requirements of the applicable Building Department or other appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations. The work shall conform at all times to the safety criteria established with and approved by the property owner, or designee, and shall neither unreasonably disrupt nor interfere with the property owner's operations. The

contractors and subcontractors performing the work shall indemnify, defend and hold harmless the property owner, its employees and representatives from any and all liability, damages and claims. In addition, as a pre-condition to commencing the work, the contractor(s) shall provide the property owner with insurance certificates evidencing insurance coverage and limits meeting, at a minimum, the property owner's requirements.

It is expressly understood by the Parties that construction activities may not commence on the other Party's property, until the property owner, or its designee, has received all required items and has notified the other Party, in writing, as to the approved date for the start of the work.

VI.

MAINTENANCE

Unless specified to the contrary in Exhibit "B" or elsewhere in this Agreement or any amendment hereto, the CITY shall keep all recreational facilities and equipment located on the Park, and the BOARD shall keep all improvements located on the Parking Lot, in a safe, clean and working condition at all times, and shall repair those improvements to grounds, buildings, recreational improvements or any other improvements to the other Party's property, where the property owner can clearly substantiate that the improvements were damaged as a result of the actions of the other Party.

The CITY shall comply with all applicable federal, state, and local laws, regulations, and requirements governing the application of herbicides and pesticides within the Park.

The Parties acknowledge that the BOARD shall provide routine maintenance to the Parking Lot in conformance with the District's standards, operating procedures, and frequency of service, and the CITY shall provide routine maintenance to the Park in accordance with its municipal standards and procedures. The Parties further acknowledge and agree that if maintenance activities are required beyond standard service levels due to excessive use by either Party under this Agreement, they shall work in good faith to resolve the matter.

VII.

UTILITIES

Unless specified to the contrary in Exhibit "B" or elsewhere in this Agreement or

any amendment hereto, the CITY shall establish utility accounts in its name, if required, for the Park, and the BOARD shall establish utility accounts in its name, if required, for the Parking Lot, and each Party shall pay for the electricity, water and sewer, garbage/trash collection and any other utilities consumed thereon. The Parties further acknowledge and agree that if utility usage within the Demised Premises is excessive due to use by the CITY or the BOARD under this Agreement, the Parties shall work in good faith to resolve this matter.

VIII.

LIABILITY FOR DAMAGE OR INJURY

The BOARD shall not be liable for any damage or injury which may be sustained by the CITY or any persons on or about the Parking Lot, other than damage or injury resulting from the negligent performance or failure of performance on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement, subject to the limitations included within Section 768.28, Florida Statutes. The BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

The CITY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on or about the Park, other than damage or injury resulting from the negligent performance or failure of performance on the part of the CITY, its agents, representatives or employees, or failure of the CITY to perform its covenants under this Agreement, subject to the limitations included within Section 768.28, Florida Statutes. The CITY 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.

IX.

INDEMNIFICATION AND HOLD HARMLESS

The CITY does hereby agree to indemnify and hold harmless the BOARD, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the CITY 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 CITY 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 CITY. However, nothing herein shall be deemed to indemnify the BOARD from any liability or claim arising out of the negligent performance or failure of performance of the BOARD or as a result of the negligence of any unrelated third party.

The BOARD does hereby agree to indemnify and hold harmless the CITY, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the BOARD 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 BOARD 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 BOARD. However, nothing herein shall be deemed to indemnify the CITY from any liability or claim arising out of the negligent performance or failure of performance of the CITY or as a result of the negligence of any unrelated third party.

The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement.

X.

ASSIGNMENT AND SUBLETTING

The BOARD may assign, transfer, or otherwise dispose of this Agreement for the term hereof, or sublease the Parking Lot or any part thereof, during the CITY'S Period of Use of Parking Lot, provided that such disposition does not interfere with the CITY'S Right of Use of Parking Lot under this Agreement.

The CITY may assign, transfer, or otherwise dispose of this Agreement for the term hereof, or sublease the Park or any part thereof, during the School's Period of Use of Park, provided that such disposition does not interfere with the BOARD'S Right of Use of the Park under this Agreement.

XI.

CANCELLATION

In addition to the provisions of Articles XII and XVII, either Party may cancel this Agreement by providing the other Party with a minimum of thirty (30) days' prior written notice; provided, however, that any such cancellation shall become effective only upon completion of the School year then in effect. In the event of cancellation or termination, the Demised Premises shall be surrendered in accordance with the provisions of Article XXVI.

XII.

DEFAULT

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

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

XIII.

NO LIABILITY FOR PERSONAL PROPERTY

The CITY and BOARD agree 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. The Parties hereby waive all rights of subrogation under any policy or policies it may have.

XIV.

INSURANCE REQUIREMENTS

The CITY shall maintain and provide evidence of public liability insurance in amounts acceptable to the BOARD, or an ongoing self-insurance program covering the CITY, its officers and employees, for any activities related to this Agreement. The BOARD shall maintain and provide evidence of public liability insurance in amounts acceptable to the CITY, or an ongoing self-insurance program covering the BOARD, its officers and employees for any activities related to this Agreement.

XV.

RIGHT OF ENTRY

Other than in the event of emergency, and subject to the provisions of Article XXII, after first providing a minimum of 24-hours advance notice to the Recreation Director or School Administrator, either Party, or any of its authorized agents, representatives or employees, shall have the right to enter the Parking Lot or Park during the other Party's Period of Use to examine the same, provided their actions do not unreasonably interfere with the other Party's use of the Park or Parking Lot.

This right of entry includes, but is not limited to, the right of a Party, or any of its authorized agents, representatives or employees, to enter its own property during the other Party's Period of Use for the purpose of examination related to the design and/or construction of recreational, educational, ancillary or parking facilities. It is agreed and understood by the Parties that such examinations may include, but are not limited to, test borings and surveys which require entry by personnel on to or leaving materials and equipment on a site for an extended period of time. The Parties agree to work together to minimize the effect of these examinations on the other Party.

XVI.

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 **BOARD**:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
Perla Tabares Hantman School Board Administration Building
1450 N.E. 2nd Avenue, Room 912
Miami, Florida 33132
Fax: 305-995-1488

With copies to:

Miami-Dade County Public Schools
Attention: Chief Facilities Design & Construction Officer
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132
Fax: 305-995-4760
Email: rperez6@dadeschools.net

AND

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

In the case of notice or communication to **CITY**:

Name: _____

Attn: _____

Address: _____

E-mail: _____

With a copy to:

Name: _____

Attn: _____

Address: _____

E-mail: _____

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 or his/her designee shall be the party designated by the BOARD to grant or deny all approvals or waivers required by the Agreement dealing with construction by the CITY or by the BOARD of recreational improvements on the Demised Premises, modifying the areas or periods of use, allowing the CITY to hold City Events on the Parking Lot, or any other routine operational issues.

D. In addition to the above, for purposes of this Agreement, the Superintendent 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 in this Agreement, and to grant or deny any approvals required by the Agreement, including placing the CITY in default, or renewing, extending, canceling or terminating this Agreement.

E. The City Manager or his/her designee, shall be the Party designated by the CITY to grant or deny any approvals required by this Agreement, including placing the BOARD in default, or renewing, extending, canceling or terminating this Agreement.

F. 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 the BOARD and Counsel

for the CITY may deliver Notice on behalf of the BOARD and the CITY, 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.

XVII.

DAMAGE OR DESTRUCTION

Other than damage or destruction caused by CITY, in the event the Parking Lot should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the Parking Lot are rendered untenable or unfit for the purpose intended, BOARD may, at BOARD'S sole option, either cancel this Agreement by giving written notice to the CITY, or repair the damaged/destroyed facilities, at BOARD'S expense. The Parties acknowledge and agree that, as set forth in this Article, repair/replacement of the damaged/destroyed facilities by the BOARD, if the BOARD so elects, shall be strictly and exclusively limited to repair/replacement of those improvements necessary to render the Parking Lot capable of serving the District's public school students and staff in a traditional public school setting, and shall not include any construction, improvements or upgrades to the Parking Lot that may have been completed by the CITY under this Agreement. If BOARD opts to repair or replace the damaged/destroyed facilities, then BOARD 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 such damage or destruction, or other reasonable time period 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 or other jurisdictional entities and available funding for such repairs. Should the damage/ destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then CITY may, at its sole option, cancel this Agreement by giving written notice to the BOARD.

Any damage or destruction sustained to the Parking Lot as a result of CITY'S actions shall be repaired by CITY at CITY'S sole cost and expense. In that event, CITY 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 BOARD may, at its sole option, cancel this Agreement by giving written notice to the CITY.

Other than damage or destruction caused by BOARD, in the event the Park should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the Park is rendered untenable or unfit for the purpose intended, CITY may, at CITY'S sole option, either cancel this Agreement by giving written notice to the BOARD, or repair the damaged/destroyed facilities, at CITY'S expense. The Parties acknowledge and agree that, as set forth in this Article, repair/replacement of the damaged/destroyed facilities by the CITY, if the CITY so elects, shall be strictly and exclusively limited to repair/replacement of those improvements necessary to render the Park capable of serving the public, and shall not include any construction, improvements or upgrades to the Park that may have been completed by the BOARD under this Agreement. If CITY opts to repair or replace the damaged/destroyed facilities, then CITY 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 such damage or destruction, or other reasonable time period 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 or other jurisdictional entities and available funding for such repairs. Should the damage/ destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then BOARD may, at its sole option, cancel this Agreement by giving written notice to the CITY.

Any damage or destruction sustained to the Park as a result of BOARD'S actions shall be repaired by BOARD at BOARD'S sole cost and expense. In that event, BOARD 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 CITY may, at its sole option, cancel this Agreement by giving written notice to the BOARD.

XVIII.

NON-DISCRIMINATION

Both Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, ethnic or 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. 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.

XIX.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Agreement, both Parties agree that the other Party shall and may peaceably have, hold and enjoy the Demised Premises, without hindrance or interference by the other Party. Subject to the provisions of Article XXVI, at the expiration of this Agreement, both Parties shall, without demand, quietly and peaceably deliver up possession of the Demised Premises and all improvements thereon to the applicable Property owner in good order and repair, except for normal wear and tear, or decay and damage by the elements, or other Acts of God.

XX.

SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the Parties herein and their legal representatives subject to conditions set forth in this Agreement.

XXI.

EXTENSION OF TERM

If not in default in performance of its obligations set forth in this Agreement, the Parties may extend the term, by mutual agreement, under the same terms and conditions

set forth herein for one (1) additional term of five (5) years from the expiration of the original term or any renewal hereof, provided one Party gives written notice to the other at least ninety (90) days prior to the expiration of the then current term. The Parties acknowledge and agree that any extension of the term shall be accomplished through the execution by the Parties of an amendment to this Agreement.

XXII.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

The Parties 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, 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 School Board policy, as all may be further amended from time to time and to the extent required by applicable law.

XXIII.

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.

XXIV.

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 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.

XXV.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver is in writing and signed by the CITY or BOARD. 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.

SURRENDER OF PREMISES

Upon the cancellation, termination or expiration of this Agreement or any extension thereof, the CITY and BOARD agree to promptly and peacefully surrender and deliver possession of the Demised Premises to the applicable property owner 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. Each Party shall be required to promptly remove all of its personal property and other items from the other Party's property, including any signage it installed.

Subject to Article XI of this Agreement, at the Property owner's sole option, the CITY shall remove any improvements or facilities constructed by the CITY on the Parking Lot, and the BOARD shall remove any improvements or facilities constructed by the BOARD on the Park, and restore the area to the same or better condition as existed before the Commencement Date of this Agreement, within ninety (90) days of said termination, cancellation or expiration, or other reasonable period of time agreed to by the Parties. In the event the BOARD or CITY elect to retain any or all of the improvements constructed on its property by the other Party, the other Party agrees to convey title to said improvements, without compensation or remuneration.

XXVII.

**BACKGROUND SCREENING REQUIREMENTS AND
COMPLIANCE WITH SCHOOL CODE**

Pursuant to the 2007 amendments to the Jessica Lunsford Act enacted by the Florida Legislature, requirements for certain fingerprinting and criminal history checks shall be inapplicable to non-instructional contracted personnel who qualify for exemption from level 2 screening requirements as provided under § 1012.468, Fla. Stat. (2007). In addition, the provisions of § 1012.467, Fla. Stat. (2007) are incorporated herein by reference, and any provisions of this Agreement that may be inconsistent with, contrary to, or determined to be in conflict with § 1012.467, will be superseded by said Statute.

A non-instructional contractor who is exempt from the screening requirements set forth in § 1012.465, § 1012.468 or § 1012.467, Florida Statutes, is subject to a search of his or her name or other identifying information against the registration information

regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under § 943.043 and the national sex offender public registry maintained by the United States Department of Justice. The CITY will not be charged for this search. Further, upon obtaining clearance by the BOARD, if the BOARD deems necessary, the BOARD will issue a photo identification badge which shall be worn by the individual at all times while on the Parking Lot when students are present.

The Parties further agree that failure by the CITY to perform any of the duties described in this Article XXVII shall constitute a material breach of the Agreement entitling the BOARD, at its sole option, to place the CITY in default.

XXVIII.

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.

XXIX.

SUBORDINATION AND ESTOPPEL

Notwithstanding any other provisions of this Agreement, this Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases, and the rights of the BOARD or CITY under those leases and to all financing that may now or hereafter affect the leases, 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, the CITY or BOARD shall execute, within thirty (30) calendar days of request, any certificate that the other Party may request. In addition, at the BOARD'S or CITY'S request, the other Party shall execute and return an Estoppel Letter, confirming the substantive terms and status of this Agreement, within thirty (30) days of receipt of such a request.

XXX.

**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 Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention. The Parties shall keep and maintain public records required by the other to perform the service. The Parties shall keep records to show their compliance with this Agreement. The Parties' contractors and subcontractors must make available, upon request of the other Party, 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 applicable Party 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 either Party's custodian of public records, the other Party shall provide the requesting Party 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 Parties 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 Parties do not transfer the records to the other Party. The Parties, their 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 Parties, upon completion of the Agreement, shall transfer, at no cost to the other, all public records in their possession or keep and maintain public records required by the other Party to perform the service. If the one Party transfers all public records to the other Party upon completion of the Agreement, the transferring Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If a Party keeps and maintains public records upon completion of the Agreement, the Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the other Party, upon request from the requesting

Party's custodian of public records, in a format that is compatible with the information technology systems of the requesting Party.

The Parties shall incorporate this provision into every contract that it enters into relating to the Agreement.

IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE BOARD'S CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, PRR@DADESCHOOLS.NET, AND 1450 NE 2 AVENUE, MIAMI, FLORIDA 33132.

IF THE BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, WHO, AT (XXX) XXX-XXXX; E-MAIL; and ADDRESS.

XXXI.

SIGNAGE

The Parties shall be permitted to erect identification signage on or near the Demised Premises, at the requesting Party's sole cost and expense and in conformance with all applicable rules and regulations governing such use, subject to the express prior written approval of the property owner, or designee.

Notwithstanding this provision, the CITY shall be required to erect and maintain appropriate signage within or near the Parking Lot to clearly notify park patrons of the hours of availability, specifying that following regular school hours, the Parking Lot are reserved exclusively for the use of park patrons, and all vehicles remaining after Park hours shall be towed at the owner's expense.

Upon the termination, expiration or cancellation of this Agreement, each Party shall remove, at its expense, any signage erected by it on the other Party's property and restore the area to the same or better condition as existed prior to installation of the signage.

XXXII.

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 Parking Lot or Park, or arising from one Party's use or occupancy of the Demised Premises, including, but not limited to, soil, air, surface and/or ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from a site. 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 a site or that arises at any time from the BOARD'S or CITY'S use or occupancy of the Demised Premises.

Neither the BOARD nor CITY shall cause or permit to occur: (a) any violation of any Environmental Law on the Demised Premises 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 site of any Hazardous Substance.

Both Parties shall comply with all applicable Environmental Laws with respect to the Demised Premises. Both Parties shall 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. Any previously conducted site assessment reports shall be provided by the Parties on all sites if available. Determination of responsibility shall be established by both Parties for all remediation of contaminants prior to the Parties effecting an agreement for site use. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by either Party with respect to a site, then the responsible Party

shall, at its 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. The Parties shall promptly notify each other of any notices or communications received from any jurisdictional entity in relation to any environmental findings on a site, and shall promptly provide the other Party with all information reasonably requested by the other Party regarding its use, generation, storage, transportation or disposal of Hazardous Substances in or at a site. The Parties shall indemnify the other against any Hazardous Substances Discharge demonstrated to have been caused by one Party on the other Party's property or elsewhere on the Demised Premises. The obligations and liability of the Parties under this paragraph shall survive the expiration or termination of this Agreement.

XXXIII.

TAXES AND REGULATORY COMPLIANCE

The CITY shall be responsible for the collection and payment of any taxes, fees or other assessments, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the Parking Lot or School as a result of the leasing, use, and occupancy of the Parking Lot by the CITY. 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 the CITY'S lease, use or occupancy of the Parking Lot, the CITY acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, including any upgrades, modifications or changes, at the CITY'S sole cost and expense.

The BOARD shall be responsible for the collection and payment of any taxes, fees or other assessments, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the Park, as a result of the leasing, use, and occupancy of the Park by the BOARD. 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 the BOARD'S lease, use or occupancy of the Park, the BOARD acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, including any upgrades, modifications or changes, at the BOARD'S sole cost and expense.

Notwithstanding any provision contained in this Agreement, one Party shall not allow or engage in any activity which may impact the other Party's immunity or exemption from the consequences of any tax whatsoever.

XXXIV.

USE OF FACILITY AS A REVENUE GENERATOR

The BOARD and CITY shall retain the exclusive right to be the sole authorizer and recipient of revenue generators relating to its property, in compliance with its Policies, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the BOARD'S or CITY'S right to peaceful enjoyment of the applicable property.

XXXV.

REPRESENTATIONS

The CITY is duly organized, validly existing, and in good standing under the laws of the State of Florida and has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the CITY of its obligations under this Agreement, have been duly authorized by all necessary actions of the CITY, and do not contravene or conflict with any rules, regulations, policies or laws governing the CITY, or any other agreement binding on the CITY. The individual(s) executing this Agreement on behalf of the CITY has/have full authority to do so.

The BOARD is duly organized, validly existing, and in good standing under the laws of the State of Florida has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the BOARD of its obligations under this Agreement, have been duly authorized by all necessary action of the BOARD, and do not contravene or conflict with any rules, regulations, policies or laws governing the BOARD, or any other agreement binding on the BOARD. The individual(s) executing this Agreement on behalf of the BOARD has/have full authority to do so.

XXXVI.

AMENDMENTS

In addition to an extension of the term, which shall be accomplished through the

execution by the Parties of an amendment to this Agreement, as set forth in Article XXI, the BOARD and CITY, 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 BOARD and by the CITY in compliance with all applicable laws, including, without limitation, Section 1013.15(1), F.S. Such amendments shall be effective only when signed by the BOARD and CITY and shall be incorporated as part of this Agreement.

XXXVII.

MISCELLANEOUS PROVISIONS

- A. RECORDATION:** This Agreement may not be recorded in the public records of Miami-Dade County, Florida, in any form, by either Party.
- B. EMINENT DOMAIN:** If any part of the BOARD-owned property or CITY-owned property is taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. The CITY and BOARD may pursue all available remedies for the taking but will have no interest in the award made to the condemnee.
- 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 ITS USE OR OCCUPATION OF THE DEMISED PREMISES.
- F. BROKERS:** Subject to the limitations of Section 768.28, F.S., as same may be amended from time to time, the CITY and BOARD represent 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 the CITY or BOARD ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify and hold harmless the other Party ("**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, fees and expenses whatsoever, except attorney's fees, court costs or costs of defense, with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination or cancellation of this Agreement.

- G. PROMOTION:** Other than activities undertaken to promote the CITY'S use of the Parking Lot, and the BOARD'S use of the Park, the Parties shall not be permitted to use the property owner's site for promotion or advertising of any type or nature whatsoever.
- H. COUNTERPARTS:** This Agreement or any amendments thereof 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. Electronic signatures shall be deemed as originals.
- I. SOVEREIGN IMMUNITY:** No provision contained in this Agreement shall be deemed a waiver of either Party's sovereign immunity.
- J. OPERATIONAL COMMUNICATION:** Each Party shall designate a representative, and may designate an alternate, to serve as its primary point of contact for operational communications concerning the Demised Premises. The designated representatives shall provide reasonable notice to one another of any scheduling, use, maintenance, safety, supervision, or other operational matter that may materially affect the Demised Premises or the other Party's use thereof.
- K. E-VERIFY:** As per Florida Statutes, as amended from time to time, the Parties are

required to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Should a Party utilize a subcontractor to perform services under this Agreement, that Party shall obtain an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. If a Party fails to obtain the Affidavit from its subcontractor and/or register with and use the E-Verify system, this Agreement shall terminate immediately. In addition, the offending party may not be awarded a public contract for at least one (1) year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public employer as a result of the termination of a contract.

- L. HUMAN TRAFFICKING AFFIDAVIT:** Section 787.06(13), Florida Statutes, requires all nongovernmental entities executing, renewing, or extending a contract with a governmental entity to provide an affidavit signed by an officer or representative of the nongovernmental entity, under penalty of perjury, that the nongovernmental entity does not use coercion for labor or services as defined in that statute. In compliance with the Florida Statute, and as a condition precedent to the commencement of this Agreement, the Parties covenants and agrees to require all nongovernmental entities providing services on its behalf, and executing, renewing, or extending a contract under this Agreement to execute the attached affidavit (attached hereto as **Exhibit “C”**).

XXXVIII.

ENTIRE AGREEMENT

This Agreement and all Exhibits attached hereto constitute the entire agreement between the Parties and supersede all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and the CITY.

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

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

WITNESSES AS TO THE BOARD:

Signature _____

Print Name: _____

Address: 1450 NE 2 Ave., Miami, Fl. 33132

Signature _____

Print Name: _____

Address: 1450 NE 2 Ave., Miami, Fl. 33132

BOARD:

THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA

By: _____

Dr. Jose L. Dotres
Superintendent of Schools

Date: _____

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

Office of Risk and Benefits Management

Risk and Benefits Officer

Date: _____

RECOMMENDED:

Mr. Raul F. Perez
Chief Facilities Design & Construction
Officer

Date: _____

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

Office of Treasury Management

Treasurer

Date: _____

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

School Board General Counsel

Date : _____

WITNESSES AS TO THE CITY:

CITY:
CITY OF CORAL GABLES

Signature _____

By: _____

Print Name _____

City Manager

Date: _____

Address: _____

ATTEST:

By _____

Signature _____

City Clerk

Date: _____

Print Name: _____

Address: _____

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

By: _____

Date: _____

Exhibit "A"

Commencement Date

Exhibit "B"
Demised Premises



Exhibit "C"

State of Florida

Affidavit Regarding the Use of Coercion for Labor and Services

Respondent Vendor Name: _____
Vendor FEIN: _____
Vendor's Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ ZIP: _____
Phone Number: _____
Email Address: _____

Section 787.06(13), Florida Statutes requires all nongovernmental entities executing, renewing, or extending a contract with a governmental entity to provide an affidavit signed by an officer or representative of the nongovernmental entity under penalty of perjury that the nongovernmental entity does not use coercion for labor or services as defined in that statute. The School Board of Miami-Dade County, Florida, is a governmental entity for purposes of this statute.

As the person authorized to sign on behalf of Respondent, I certify that the company identified does not:

- Use or threaten to use physical force against any person;
- Restrain, isolate, or confine or threaten to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Use lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroy, conceal, remove, confiscate, withhold, or possess any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Cause or threaten to cause financial harm to any person;
- Entice or lure any person by fraud or deceit; or
- Provide a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

By: _____

AUTHORIZED SIGNATURE

Print Name and Title: _____