

SECOND AMENDMENT TO MASTER RECREATION LEASE AGREEMENT

THIS SECOND AMENDMENT TO MASTER RECREATION LEASE AGREEMENT (this "Second Amendment") is made and entered into as of this ____ day of _____, 2017, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a political subdivision of the State of Florida,
having its principal place of business at
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF LAUDERHILL, FLORIDA
(hereinafter referred to as "CITY")
a municipal corporation of the State of Florida
whose address is
5581 West Oakland Park Boulevard, Lauderhill, Florida 33313

W I T N E S S E T H:

WHEREAS, SBBC and the CITY entered into a twenty-five (25) year Master Recreation Lease Agreement having an execution date of September 21, 2004 ("Master Agreement"); and

WHEREAS, on October 1, 2005, the CITY annexed the neighborhood more commonly known as West Ken Lark, which includes West Ken Lark Park; and

WHEREAS, West Ken Lark Park is located on a ten (10) acre parcel that is owned by the SBBC; and

WHEREAS, on November 23, 2010, SBBC and the CITY entered into a First Amendment to Master Recreation Lease Agreement (the "First Amendment") to include the West Ken Lark Park (the "West Ken Lark Park") under the Master Agreement and grant the CITY operational control of the West Ken Lark Park, including the upkeep, maintenance and repairs of grounds, buildings and improvements; and

WHEREAS, the CITY desires to extend the Master Agreement for forty (40) years for West Ken Lark Park only; and

WHEREAS, CITY desires to use proceeds of the CITY's tax-exempt General Obligation Bonds (the "Bonds") to make a substantial capital investment to construct, *inter alia*, a track, sports field and other recreational facilities at West Ken Lark Park (collectively, the "Improvements"); and

WHEREAS, subject to Section 2.07 of the Master Lease, CITY may be authorized to plan, design and construct a track, sports field and other recreational facilities at the West Ken Lark Park substantially in the nature as shown in **Exhibit "B"** and made a part hereof; and

WHEREAS, SBBC and the CITY desire to amend the Master Agreement and the First Amendment pursuant to the terms and provisions of this Second Amendment to authorize the Improvements and to provide for certain matters relating to the Bonds.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

1. Section 2.03 of the Master Agreement hereby amended and restated in its entirety to replace the original language with the following language:

2.03 **Lease Term.** The term of this Second Amendment to Master Lease Agreement (“Second Amendment”) shall expire on September 21, 2057 with respect to the ten-acre portion of the Wingate Oaks Center described on **Exhibit “C”** hereto, known as West Ken Lark Community Park (“West Ken Lark Park”), which term shall not be subject to the early termination provisions of Section 2.08, however remains subject to all other provisions of the Master Agreement including any modifications made by the First Amendment and this Second Amendment upon approval, including but not limited to, the default provision in Section 3.20. The term of the Master Agreement shall terminate on September 21, 2029 with respect to the other facilities contained within the Master Agreement and First Amendment, including the Endeavor Learning Center, Wingate Oaks Center and Lauderhill 6–12 (formerly known as Lauderhill Middle School) leased hereunder, unless terminated earlier pursuant to Section 2.08 hereof.

2. Section 2.07 of the Master Agreement is hereby amended and restated in its entirety to replace the original language with the following language:

2.07 **Improvements.** The location of any and all recreational improvements (hereafter referred to as “Improvements”) to be placed on the Leased Premises, shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any recreational facilities before they are placed on the Leased Premises. However, such approval by SBBC shall not be unreasonably withheld.

(a) The authority to grant this approval regarding this Agreement is hereby delegated by the SBBC to the SBBC’s Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that the CITY will prepare and submit plans to the SBBC’s Chief Facilities Officer and Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational facilities as applicable, and any other requirements imposed by applicable law. The SBBC’s Chief Facilities Officer and Chief Building Official shall have thirty (30) days from the date of receipt to review and comment on the plans. All design documents shall be approved by the SBBC’s Chief Facilities Officer and Chief Building Official prior to submission to the Department of Education, if applicable. The CITY agrees to obtain all necessary permits and approvals and to contract with a Contractor for the construction of the Improvements.

(b) The CITY shall be solely responsible for all contractual obligations to the contractor hired to construct the Improvements.

(c) The CITY shall ensure the contractor correct any defective or faulty work or materials that appear after the completion of the Improvements within the warranty period of such work performed.

(d) The CITY will be responsible for maintenance and repair of the improvements placed on the Leased Premises.

(e) Any facilities placed on said Leased Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended, in writing, to reflect the use and responsibility of the Improvements.

(f) SBCC may approve the construction and installation by the CITY of a track, sports field and other recreational facilities (collectively, the "West Ken Lark Park Improvements") on the ten-acre portion of the Wingate Oaks Center described on **Exhibit "C"** hereto, known as West Ken Lark Community Park ("West Ken Lark Park"), as such park is further described in that certain First Amendment between the CITY and SBBC dated November 23, 2010. SBBC acknowledges that the CITY will fund the cost of the Improvements, all or in part, with proceeds of its tax-exempt General Obligation Bonds, (the "Bonds"). SBBC agrees that notwithstanding anything to the contrary in this Second Amendment, during the Lease Term, (i) the Improvements and West Ken Lark Park shall remain a public park, open to the general public, and available for use by the general public as well as local public schools, including, but not necessarily limited to: Larkdale Elementary, Parkway Middle, Lauderhill 6-12 and Wingate Oaks Center; and (ii) SBBC shall take no actions that would adversely impact the tax-exempt status of the Bonds for purposes of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder while the Bonds (including any bonds issued to refund the Bonds) are outstanding."

3. Section 2.08 of the Master Agreement is hereby amended to add the following sentence at the end thereof:

"The termination provisions of this Section 2.08 of the Master Agreement shall not apply to West Ken Lark Park."

4. Section 2.10(b) of the Master Agreement, as amended by the First Amendment, is hereby amended and restated in its entirety to replace the original language, as follows, and the provisions of Section 3, of the First Amendment are hereby deemed superseded by such new language:

2.10 **Hours of Operation.**

(a) This entire area will be under the control of SBCC during the hours the school on the property adjacent to the lease area is in session. During off-school hours, when the leased area is officially open by CITY, control and use of the area will be under the jurisdiction of CITY. During the periods that the entire area is under the control of SBBC, the provisions of Section 2.12 hereof shall not be deemed to apply and the School Board shall take full responsibility for the property.

b) Notwithstanding the foregoing or anything to the contrary herein, the provisions of subsection (a) of this Section 2.10 shall not apply to West Ken Lark Park and the West Ken Lark Park Improvements. West Ken Lark Park and the West Ken Lark Park Improvements will be under the total operational control of the CITY, to include

upkeep, maintenance and repairs of the grounds, buildings and improvements and control and use of the entire area will be under the jurisdiction of CITY. The CITY agrees that during the Lease Term, West Ken Lark Park shall remain a public park, and the West Ken Lark Park and West Ken Lark Improvements shall be open to the general public, and available for use by the general public as well as local public schools, including, but not necessarily limited to: Larkdale Elementary, Parkway Middle, Lauderhill 6-12 and Wingate Oaks Center, subject only to the CITY's reasonable and customary rules and regulations on the use of park and recreational property owned and operated by the CITY.

5. **Additional Provisions.** The parties hereby agree to the following additional provisions to the Master Agreement:

(a) The Master Agreement is hereby amended to add a new Section 2.13 and a new Section 2.14 as follows:

2.13 **Parking.** The CITY shall use the open access parking lot(s) for vehicle parking located on the premises subject to the Master Agreement (the "Leased Premises").

2.14 **Hazardous Materials.** The CITY shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Leased Premises by the CITY, its agents, principals, employees, contractors, consultants or invitees without the prior written consent of the SBBC's Chief Facilities Officer and Chief Building Official, which consent may be withheld for any reason whatsoever or for no reason at all. If the CITY breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material upon the Leased Premises the CITY caused or permitted by the CITY (or the aforesaid others) results in (a) any contamination of the Leased Premises, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, or if contamination of the Leased Premises or the surrounding area(s) by Hazardous Material otherwise occurs for which the CITY is legally, actually or factually liable or responsible to SBBC (or any party claiming, by through or under SBBC) for damages, losses, costs or expenses resulting therefrom, then the CITY shall be solely responsible for all costs, expenses and amounts required to remediate, clean up and correct such matter. The CITY shall further fully and completely indemnify, defend and hold harmless SBBC (or any party claiming by, through or under SBBC) from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses [including, without limitation: (i) diminution in the value of the Leased Premises and/or the land on which the Leased Premises are located and/or any adjoining area(s) which SBBC owns or in which it holds a property interest; (ii) damages for the loss or restriction on use of rentable or usable space of any amenity of the Leased Premises or the land on which the Leased Premises are located; (iii) damages arising from any adverse impact on marketing of space; and (iv) any sums paid in settlement of claims, reasonable attorneys and paralegals' fees, (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings) consultants fees and expert fees, which arise during or after the term of this License Agreement or any renewal thereof, as a consequence of such contamination. This indemnification of SBBC by the CITY includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Leased Premises.

2.14.1 Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Leased Premises or the surrounding area(s) caused or permitted by the CITY (or the aforesaid others) results in (a) any contamination of the Leased Premises, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, then the CITY shall immediately notify SBBC of any contamination, claim of contamination, loss or damage and, after consultation and approval by SBBC, take all actions at the CITY's sole expense as are necessary or appropriate to return the Leased Premises, the surrounding area(s) and the soil or

surface or ground water to the condition existing prior to the introduction of any such Hazardous Material thereto, such that the contaminated areas are brought into full compliance with all applicable statutory regulations and standards. The foregoing obligations and responsibilities of the CITY shall survive the expiration or earlier termination of this Master Agreement.

2.14.2 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. "Hazardous Material" includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal governmental law. "Hazardous substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's"), petroleum, any and all material or substances which are classified as "biohazardous" or "biological waste" (as such terms are defined by Florida Administrative Code ("F.A.C.") Chapter 17-712, as amended from time to time), and extremely "hazardous waste" or "hazardous substance" pursuant to federal, state or local governmental law.

2.14.3 SBBC and its agents shall have the right, but not the duty, to inspect the Leased Premises at any time to determine whether the CITY is complying with the terms of this License Agreement. If the CITY is not in compliance with this License Agreement, SBBC shall have the right to immediately enter upon the Leased Premises to remedy at the CITY's expense any contamination caused by the CITY's failure to comply, notwithstanding any other provision of this Master Agreement. SBBC shall use its best efforts to minimize interference with the CITY's operations, but shall not be liable for any interference caused thereby.

2.14.4 Any non-compliance by the CITY with its duties, responsibilities and obligations under this Section shall constitute a default of this Master Lease Agreement, no notice of any nature from SBBC to the CITY being required. "

(b) The Master Agreement is hereby amended to add new Sections 3.19, 3.20 and 3.21 as follows:

3.19 **Independent Contractor.** The parties to this Master Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.20 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Master Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Master Agreement may be terminated by the non-defaulting party upon thirty (30) day notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or

otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 2.08 of the Master Agreement to the extent applicable to Endeavor Learning Center, Wingate Oaks Center and Lauderhill 6-12 Schools leased hereunder.

3.21 **Contract Administration**. SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.”

3.22 **Counterparts and Multiple Originals**. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

6. **Order of Precedence Among Agreement Documents**. In the event of conflict between the provisions of the Master Agreement, the First Amendment and the provisions contained in this Second Amendment, the provisions of the following documents shall take precedence in this order:

- a) this Second Amendment to Master Recreation Lease Agreement; and
- b) the First Amendment to Master Recreation Lease Agreement; and
- c) the Master Recreation Lease Agreement.

7. **Miscellaneous**. Except as modified hereby, the terms and provisions of the Master Agreement and First Amendment are hereby ratified and confirmed. This Second Amendment may be executed in counterparts, each of which shall be deemed an original hereof. Electronically transmitted signatures shall be deemed originals.

IN WITNESS WHEREOF, the parties have executed this Second Amendment effective as of the date first set forth above.

[THIS SPACE INTENTIONALLY LEFT BLANK]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: _____
Abby M. Freedman, Chair

ATTEST:

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR CITY

CITY OF LAUDERHILL

By: _____
Charles Faranda, City Manager

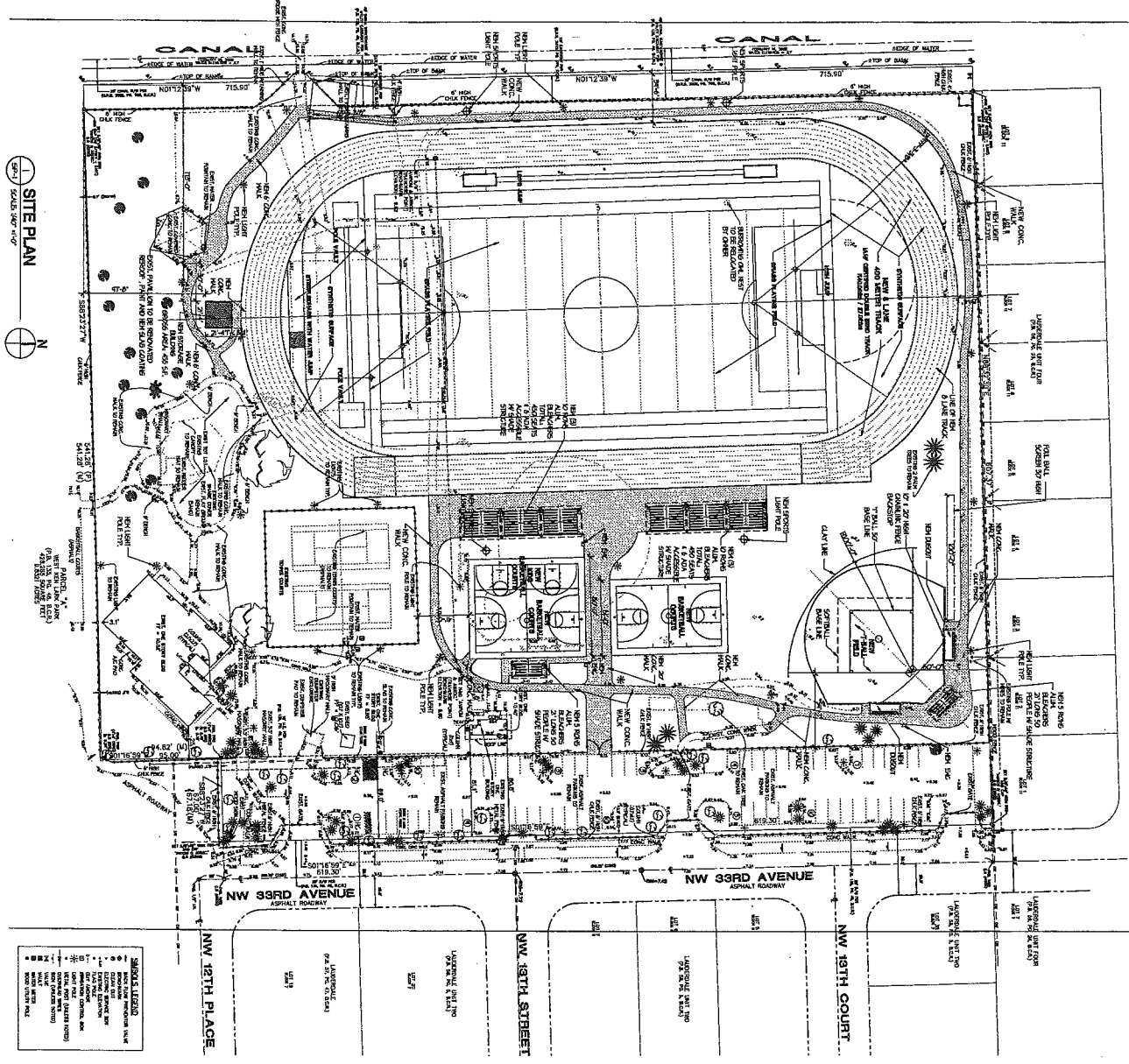
(Corporate Seal)

ATTEST:

Date: _____

Andrea M. Anderson, City Clerk

EXHIBIT B



SITE PLAN
SCALE: 1/8" = 1'-0"



SIGNALS LEGEND

- 1. 20' DIA. CONC. POST
- 2. 18" DIA. CONC. POST
- 3. 14" DIA. CONC. POST
- 4. 12" DIA. CONC. POST
- 5. 10" DIA. CONC. POST
- 6. 8" DIA. CONC. POST
- 7. 6" DIA. CONC. POST
- 8. 4" DIA. CONC. POST
- 9. 3" DIA. CONC. POST
- 10. 2" DIA. CONC. POST

SHADE STRUCTURE OVER BLEACHER

BLEACHER - 5 ROW/HIGH

SITE TABULATION		
SR.	ACRES	%
1	480.2971	100.00
REMOVAL AREAS		
NON-TIMBER	6,400	1.33
NON-CONCRETE MAINT. (WOOD)	7,445	1.55
NON-REMOVABLE BLEACHER	12,324	2.57
EXISTING CONCRETE MAINT.	1,612	0.34
EXISTING CONCRETE BLEACHER	1,612	0.34
EXISTING SHED ROOF	3,684	0.77
EXISTING MAINT. BUILDING	3,684	0.77
EXISTING TOWER WALLS	2,320	0.48
TOTAL REMOVAL AREAS	37,061	7.72
TOTAL SERVICES AREAS	24,800	5.16
BLEACHERS COUNT TABULATION		
EXISTING AREAS		
5 ROW BLEACHERS OF 50 ROWS	400	8.32
BASISSEMENT COUNT	50	10.41
1.5 ROW BLEACHERS OF 50 ROWS	50	10.41
TOTAL	400	83.26
PARKING QUANTITIES		
EXISTING REGULAR PARKING SPACES	1	0.21
EXISTING HANDICAPPED PARKING SPACES	2	0.42
TOTAL EXISTING SPACES	3	0.63

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ARCHITECTS
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GAITHERSBURG, MD 20878
TEL: 301-251-4000
WWW.SALTZMICROSON.COM

WEST KEN LARK PARK
PARK RENOVATIONS
13 NW 33RD AVE. CITY OF LAUDERHILL, FLORIDA



EXHIBIT C

