

SECOND AMENDMENT TO MASTER LEASE AGREEMENT

THIS SECOND AMENDMENT TO MASTER LEASE AGREEMENT is made and entered into as of this ____ day of _____, 2018 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, Hollywood, Florida 33301

and

CITY OF HOLLYWOOD, FLORIDA

(hereinafter referred to as "City")
a municipal corporation
whose principal place of business is
2600 Hollywood Boulevard, Hollywood, Florida 33022

WHEREAS, SBBC and the City entered into a forty (40) year Lease Agreement on February 19, 1991 (hereafter "Agreement") to allow the City to lease, sub-lease, and utilize grounds adjacent to Apollo Middle School for recreational purposes and allow the City to work with a Section 501(c) tax exempt organization to construct community recreational facilities to be made available to residents of the City in the area; and

WHEREAS, SBBC and City entered into an Amendment to Master Lease Agreement on March 17, 1992 (hereafter "First Amendment") allowing the City to enlarge the leased area (hereafter "Leased Area"); and

WHEREAS, City has constructed two (2) recreational facilities buildings (City's Parks and Athletics building and Boys & Girls Club building) upon the Leased Premises, as well as a City Park (hereafter "Montella Park"); and

WHEREAS, the City's renovations of Montella Park currently include, water feature, pavilion, playgrounds, safety surfacing, lighting and park furniture; and

WHEREAS, City desires, its City's sole expense, to make further improvements at Montella Park, to include construction of a restroom; and

WHEREAS, SBBC and City mutually desire to amend the Agreement to authorize City to make the proposed restroom addition improvements at Montella Park through this Second Amendment to the Agreement (hereafter "Second Amendment").

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:

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

1.02 **Amended Provisions.** The parties hereby agree to the following amended provision to the Agreement:

The following provision shall be added to the Agreement, by interlineation, as follows:

2.01 **Leased Area.** The Master Lease Agreement is hereby amended to include within the Leased Area the proposed restroom that City will construct at Montella Park as shown on the sketch attached hereto as **Exhibit "B"** and incorporated herein by reference.

2.02 **Parking.** City residents shall use the open access parking lot(s) located on the Leased Area to park vehicles while using the Leased Area. For the purposes of this Agreement a vehicle shall be defined as a car, pick-up truck, SUV and/or motorcycle.

2.03 **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 erected upon 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 SBBC to SBBC's Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that 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 {"SREF"} as applicable, and any other requirements imposed by applicable law. SBBC's Chief Facilities Officer and Chief Building Official shall have thirty (30) calendar days from the date of receipt to review and comment on the plans. All design documents shall be approved by SBBC's Chief Facilities Officer and Chief Building Official prior to submission to the Florida Department of Education, if applicable. City agrees to obtain all necessary permits, inspections, and approvals resulting in obtaining a Certificate of Occupancy from the School District. City also agrees to contract with a contractor for the construction of the Improvements.

(b) Before the commencement of the Improvements, City shall require the engaged contractor to furnish surety payment and performance bonds (if project is over two-hundred thousand dollars (\$200,000.00 or more) that guarantee the completion of the Improvements and the performance of the work necessary to complete the Improvements; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the Improvements. City shall ensure that the engaged contractor shall be required by contract to deliver a copy of the surety bond to City. Such bonds shall remain in effect for one (1) year after completion of the Improvements. City shall ensure that the contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements within the warranty period of such work performed.

(c) City shall be solely responsible for all contractual obligations to the contractor engaged to construct the Improvements.

(d) City will be responsible for maintenance and repair of restroom improvements placed on the Leased Area.

(e) Any facilities placed on said Leased Area without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) calendar 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.

2.04 **Consumables.** The City will provide consumables (toilet paper, paper towels, and hand soap, etc.) in the restrooms as needed on an ongoing basis and will restock the consumables during the term of this Agreement.

2.05 **Maintenance.**

(a) It shall be the responsibility of the City to maintain and keep the Leased Premises clean, sanitary and free from trash and debris. The City will continue to mow the Leased Premises lawn to prevent unsightly accumulation of weeds and other vegetation.

(1) Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City of such failure to comply, by Certified Mail, Return Receipt Requested. If, after a period of ten (10) days of such mailing, the City has not commenced to complete the cleaning and/or mowing of said recreational area, SBBC shall have the right to enter upon the Licensed Premises, remove trash and debris from the area, or mow the area and charge the City the cost incurred by SBBC for such services. Billing for trash and debris removal or mowing shall be on a per-cleaning or per-mowing basis and shall be due and payable within fifteen (15) days after receipt of said billing by the City.

(b) The upkeep and maintenance of the Licensed Area shall be borne by City, and City agrees at all times to keep the areas herein licensed and the Improvements placed on said area properly maintained.

(c) Notwithstanding anything else in this Section 2.05 to the contrary, the City agrees to be liable and responsible for any and all maintenance, cleanup, damages and injuries that may arise regarding the Leased Area during the duration of this Agreement.

2.06 **Hours of Operation.** The Leased Area will be under the total operational control of City, to include upkeep, maintenance and repairs of the grounds, buildings and improvements and control and use of the entire Leased Area will be under the jurisdiction of City. City agrees that during the Lease Term, Montella Park shall remain a public park, and the Montella Park and Improvements shall be open to the general public, and made available for use by the general public as well as local district schools, including, without limitation, Hollywood Park Elementary and Apollo Middle School, subject only to City's reasonable and customary rules and regulations upon the use of park and recreational property owned and operated by City.

2.07 **Security of Leased Premises.** City is solely responsible for any security necessary for any events and/or activities that the City permits upon the Leased Area. The City will secure the Leased Area by locking the Leased Area including the restrooms after hours of operation as stated herein in Section 2.06. If it is determined that any safety issues occurred on the Leased Area, the City will be liable and indemnify the SBBC consistent with **Sections 2.09, 2.10**, and any other applicable provisions in this Agreement.

2.08 **Ownership of Improvement at Lease Expiration.** In the event this Agreement is not terminated and/or canceled by SBBC or City prior to its expiration date, all permanent Improvements shall become the property of SBBC at the expiration of this Agreement. However, City shall have the right to remove all moveable (non-permanent) Improvements at the expiration, cancellation or termination of this Agreement.

2.09 **Insurance.** Upon execution of this Second Amendment to the Master Lease Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or self-insurance evidencing the required coverage.

2.10 **Required Insurance Coverages.** Without waiving its right of sovereign immunity under Section 768.28, Florida Statutes, each party acknowledges that it is self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. Each party shall maintain General Liability Insurance throughout the term of this Agreement with limits of liability not less than \$1,000,000 Each Occurrence \$2,000,000 General Aggregate. Each party shall procure and maintain at its own expense and keep in effect during the full term of the Agreement, a policy or policies of insurance or self-insurance under a Risk Management Program in accordance with Section 768.28, Florida Statutes, for General and Automobile Liability.

2.10.1 Each party shall procure and maintain at its expense and keep in effect during the full term of the Agreement, Self-insured Worker's Compensation Insurance with Florida statutory benefits in accordance with Chapter 440, Florida Statutes, including Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

2.10.2 Automobile Liability Insurance: Each party shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in an amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage. Policy or policies of self-insurance under a risk management program shall be acceptable and must be in effect during the full term of the agreement.

2.10.3 Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by, Section 768.28, Florida Statutes. Both parties reserve the right to require other insurance coverage that both parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Commission or Board approval, if necessary.

2.10.4 Violations of the terms of this section and its subparts shall constitute a material breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement pursuant to Section 2.16 of the Agreement.

2.10.5 No activities under this Agreement shall commence until the required proof of self-insurance and/or certificates of insurance have been received and approved by the Risk Managers of each party.

2.11 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance

or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.12 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.13 **No Third-Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

2.14 **Independent Contractor.** The parties to this 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, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

2.15 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.16 **Termination.**

(a) It is specifically agreed between the parties hereto that at any time SBBC desires to cancel and/or terminate this entire Agreement or any designated portion of the Leased Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have the unqualified right to do so with or without cause. SBBC's determination to cancel and/or terminate this Agreement or any portion thereof shall be conclusively binding upon all parties. In the event SBBC so elects, the City shall be given ninety (90) calendar days written notice prior thereto and in the event of cancellation, SBBC shall reimburse the City for the then remaining value of the City-installed Improvements amortized for remaining term. In the event the parties hereto cannot mutually agree on said value, same shall be appraised by three (3) appraisers; one selected by SBBC; one selected by the City; and the third appraiser selected by the two appraisers appointed.

(b) In the event of such appraisal of the value, the average of the three (3) appraisers shall be the amount SBBC shall pay. It is further agreed that SBBC shall be obligated to pay the fee of the appraiser selected by SBBC; the City shall be obligated to pay the fee of the appraiser selected by the City;

and the City and SBBC shall each pay fifty percent (50%) of the fee of the appraiser selected by the two (2) aforementioned appraisers.

(c) The City shall likewise have the unqualified right of cancellation of this Agreement, in whole or as to any designated portion or area of the Leased Premises upon ninety (90) calendar days written notice of cancellation to SBBC. If the City shall properly exercise its option to cancel this Agreement, as to the whole or part of the Leased Premises, the City shall have the right, subject to SBBC's purchase option described below, to remove any and all such Improvements to the property as the City had placed thereupon, except that the City shall not remove sod, landscaping, sand or earth placed upon the Leased Premises (except as incidental to removal of other fixtures and/or improvements) and the City shall, in the case of removal of Improvements, reestablish the normal grade of the Leased Premises to the condition which the same was found upon the City's first entering the Leased Premises hereunder. If, upon cancellation by the City; SBBC wishes to purchase the City-installed Improvements, then the City shall sell the same to SBBC at a mutually agreed price. However, if the City and SBBC cannot mutually agree upon such a price (the value of the fixtures and/or improvements to be purchased) then the appraisal method, above-described in **Section 2.16(b)** hereof, shall be used to arrive at a binding price.

2.17 Default. The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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 Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days written 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 pursuant to **Section 2.16**.

2.18 Compliance with Laws. Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

2.19 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

2.20 Governing Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

2.21 Entirety of Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the

parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

2.22 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

2.23 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

2.24 **Incorporation by Reference.** **Exhibit B** attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

2.25 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

2.26 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

2.27 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

2.28 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

2.29 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

2.30 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by

reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

2.31 **Order of Precedence Among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

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

2.32 **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Agreement remain in full force and effect.

2.33 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

2.34 **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.

2.35 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

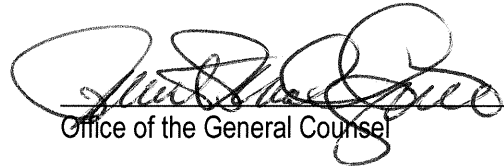
By: _____
Heather P. Brinkworth, Chair

ATTEST:

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:

 11/26/2018
Office of the General Counsel

FOR CITY

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF HOLLYWOOD, a municipal
corporation of the State of Florida

By _____
Josh Levy, Mayor

(CORPORATE SEAL)

ATTEST:

Patricia A. Cerny, City Clerk


By _____
Wazir A. Ishmael, Ph.D., City Manager

Approved as to form:

Douglas R. Gonzales
Assistant City Attorney

S:/v/allwork-use/contracts/review/1819year/180824hollywoodlease

"EXHIBIT B"



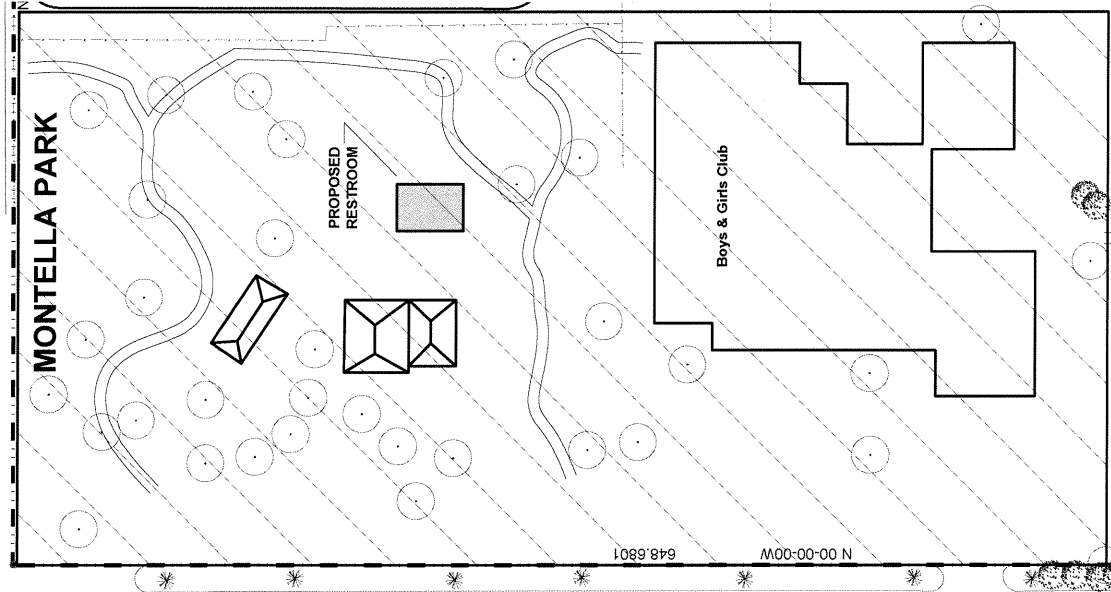
Broward County Public Schools
 Facility Planning & Real Estate
 Department
 600 S.E. 3rd Avenue, 8th Floor
 Fort Lauderdale, FL 33301
 Phone: 754-321-2177

F.I.S.H.

APOLLO
MIDDLE SCHOOL
8600 ARTHUR STREET
HOLLYWOOD FL 33024


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APOLLO
MIDDLE SCHOOL

LEASED AREA



PROPOSED RESTROOM



SITE PLAN