

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2006, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

ZEBBY'S ZOO PRODUCTIONS, INCORPORATED

(hereinafter referred to as "Zebby"),
whose principal place of business is
156 Land Lane, Westbury, New York 11590

and

TOM KOLLER

(hereinafter referred to as "Koller")
whose address is 9260 NW 15th Street,
Coral Springs, Florida 33071

WHEREAS, the parties entered into an Agreement on or about October 17, 2000 (hereafter referred to as "Agreement") wherein Zebby and Koller granted SBBC rights and a license to distribute, broadcast and transmit the programming known as "Zebby's Zoo" (hereafter referred to as "Programming").

WHEREAS, the parties wish for SBBC to receive a new license with an extended term free of the territorial limitations placed upon the original license, and provide for marketing and distribution of the Programming and the division of revenues derived from said marketing and distribution.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein 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

2.01 **Term of Agreement.** The term of this Agreement shall be for a period commencing on April 1, 2006 and concluding on June 30, 2009. This Agreement shall be effective as of the date it has been executed by all parties hereto.

2.02 **Programming License.** Zebby's and Koller hereby grant a license to SBBC and SBBC's assignees to distribute, broadcast, transmit, copy, display, exhibit, advertise, promote, project and perform the programming or any portions or segments thereof on a live and/or tape-delayed basis within SBBC's service area including, but not limited to, the right to exploitation of the Programming by means of its placement upon all forms of video, cassette, videodiscs, CD-ROMS, video cartridges, internet and videotapes or other means of storage format now known or hereafter devised.

2.03 **License Fees.** The consideration for the license granted to SBBC under this Agreement is the mutual covenants contained herein and no license fees are chargeable to SBBC for the programming during the term of the Agreement.

2.04 **Marketing and Distribution Rights.** Zebby hereby grants Koller and SBBC the right to promote, market and distribute the Programming and to grant sublicenses to third parties for use of the Programming.

2.05 **Marketing and Distribution Techniques.** The methods, techniques and resources to be applied by Koller for the promotion, marketing and distribution of the Programming is solely within his discretion. The methods, techniques and resources to be applied by SBBC for the promotion, marketing and distribution of the Programming is solely within its discretion.

2.06 **Marketing and Distribution Costs and Revenues.** All revenues derived from distribution of the Programming shall be collected by SBBC. All expenses incurred in the promotion, marketing and distribution of the Programming shall be fully documented and submitted to SBBC's Director of BECON. After the reimbursement to Koller and to SBBC of their respective appropriate expenses incurred in the promotion, marketing and distribution of the programming, the remaining net revenues derived from the Programming's distribution shall be evenly divided between Koller and SBBC.

2.07 **Audits.** Koller and SBBC each have the right to request and conduct an independent audit of each other's records regarding expenses incurred by the other party in the promotion, marketing and distribution of the Programming. Koller and SBBC each shall have the right to request and conduct an audit of each other's records regarding revenues received from the distribution of the Programming. The cost of each requested audit shall be borne by the

party requesting the audit. Koller and SBBC each agree to fully cooperate with the conduct of any audit and to provide appropriate space for the auditor to perform his/her duties in connection with any audit and to provide the auditor full access to any and all records pertaining to the promotion, marketing and distribution of the Programming.

2.08 **Access to Records.** Koller and SBBC each agree to give each other full access to any and all records pertaining to the promotion, marketing and distribution of the Programming including, without limitation, records regarding revenues received from the distribution of the Programming and records regarding expenses incurred in the promotion marketing and distribution of the programming. This right of access shall also extend to any independent auditor performing an audit pursuant to Section 2.09 of this Agreement.

2.09 **Indemnification.**

A. By SBBC: SBBC agrees to be fully responsible for its acts of negligence, or its agents acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By Zebby: Zebby agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Zebby, its agents servants or employees; the equipment of Zebby, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Zebby or the negligence of Zebby's agents when expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Zebby, SBBC or otherwise.

C. By Koller: Koller agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Koller, his agents, servants or employees; the equipment of Koller, his agents servants or employees while such equipment is on premises owned or controlled by SBBC; of the negligence of Koller or the negligence of Koller's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Koller SBBC or otherwise.

2.10 **Programming Indemnification.** Zebby warrants, to the best of its knowledge, that SBBC's authorized use of the Programming shall not infringe any third party's valid patent or copyright existing as of the effective date of this Agreement. Zebby shall hold

harmless and defend SBBC against any and all suits based on any claim that the use of the Programming by SBBC under this Agreement infringes on any United States patent right or copyright, provided Zebby is promptly notified in writing of any such suit or claim against SBBC, and further provided that SBBC permits Zebby to defend, compromise or settle the same at Zebby's sole expense, and gives Zebby all available information, reasonable assistance and authority to enable Zebby to do so. This indemnity shall not apply to any infringement arising out of: (1) the alteration or modification of the Programming by SBBC; or (2) any use of the Programming which is not authorized herein.

2.11 **Background Screening.** Zebby and Koller agree to comply with all the requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that all Zebby and Koller personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Zebby and Koller or its personnel providing any services under the conditions described in the previous sentence. Zebby and Koller will bear the cost of acquiring the background screening required under Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement of to maintain the fingerprints provided with respect to Zebby and Koller and its personnel. The Parties agree that the failure of Zebby and Koller to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Zebby and Koller agree to indemnify and hold harmless SBBC, its officers and employees of any liability in the form of physical or mental injury, death or tangible property damage resulting Zebby's or Koller's failure to comply with the requirements of this section of Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **Titles:** Section and paragraph titles used in this Agreement are for convenience only and are not a part of the text hereof.

3.02 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.03 **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.

3.04 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.05 **Termination.**

3.05.1 **Termination for Cause.** Either party will have the right to terminate this Agreement immediately upon written notice at any time if:

- i. The other party is in material breach of any term, condition or covenant of this Agreement and fails to cure the breach within sixty (60) days after written notice of such breach; (use of Zebby Zoo in any component not listed and for which no License Fee has been paid through is a material breach); or
- ii. The other party: (i) becomes insolvent, (ii) admits in writing its insolvency or inability to pay its debts or perform its obligations as they material or (iii) makes an assignment for the benefit of creditors; or
- iii. SBBC fails to use Zebby Zoo in accordance with the standards adopted by Zebby Zoo or otherwise markets Zebby Zoo in an immoral or illegal manner. Accordingly, Zebby Zoo reserves the right to inspect SBBC's use of Zebby Zoo at all reasonable times upon prior written notice to SBBC.

3.05.2 **Termination for Convenience.** Either party shall have the right to terminate this Agreement for convenience immediately upon written notice.

3.05.3 **Right to Distribute Following Termination.** Upon expiration or termination of the Agreement, SBBC will have the right to distribute copies of the Materials reproduced prior to such termination for a period not to exceed one hundred and eighty (180) days without written permission from AB. SBBC may distribute copies of the program and components reproduced prior to termination after the 180 day period only with the written permission of Zebby Zoo which shall not be unreasonably withheld. No other reprints or reproductions of the Materials incorporating Zebby Zoo shall be made after termination. Such distribution to third parties will be subject to payments as provided herein.

3.06 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.07 **Entire 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.

3.08 **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.

3.09 **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 expresses 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.

3.10 **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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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

3.12 **Governing Law.** 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.

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

3.14 **Assignment.** Neither this Agreement nor 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.

3.15 **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.

3.16 **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.

3.17 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.18 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, BECON
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To Zebby: Zebby’s Zoo Productions, Incorporated
156 Land Lane
Westbury, New York 11590

To Koller: Tom Koller
9260 NW 15th Street
Coral Springs, Florida 33071

3.19 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.20 **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.

3.21 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.22 **Relationship of the Parties:** The parties hereto are independent and neither party is the agent, joint venturer, partner, or employee of the other and, except as expressly provided herein, Zebby shall not be obligated by any agreement, representations, or warranties made by SBBC to any person, nor with respect to any other action of SBBC; nor shall Zebby be obligated for any damages to any person whether caused by SBBC's action, failure to act, negligence, or willful conduct.

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

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FOR SBBC

(Corporate Seal)

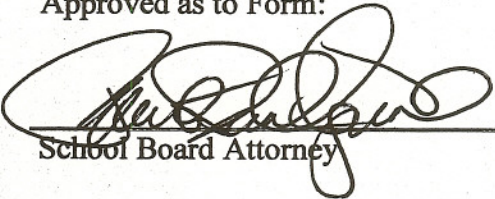
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Benjamin J. Williams, Chair

Franklin L. Till, Jr.,
Superintendent of Schools

Approved as to Form:



School Board Attorney

FOR ZEBBY

(Corporate Seal)

ZEBBY'S ZOO PRODUCTIONS,
INCORPORATED

ATTEST:

By *Edward C. Wahl*

_____, Secretary

-or-

[Signature]
Witness

[Signature]
Witness

**The Following Notarization is Required for Every Agreement Without Regard to
Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF NEW YORK

COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 31st day of
March, 2006 by Edward C. Wahl of

Zebby's Zoo Productions, Inc. Name of Person
Name of Corporation or Agency, on behalf of the corporation/agency.

He/She is personally known to me or produced NYS Drivers License as
identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Patricia L. McNamara
Signature - Notary Public

Patricia L. McNamara
Printed Name of Notary

(SEAL)

PATRICIA L. McNAMARA
Notary Public, State of New York
No. 30-4790991
Qualified in Nassau County
Commission Expires December 31, 2009

30-4790991
Notary's Commission No.

FOR KOLLER

(Corporate Seal)

ATTEST:

By Tom Koller
Tom Koller

_____, Secretary

-or-

Carol A Pagliaro
Witness

CAROL A PAGLIARO
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 16 day of March, 2006 by TOM KOLLER of

Name of Person

_____, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced FL. DRIVERS LICENSE as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Joyce A. Lamoly
Signature - Notary Public

Joyce A. Lamoly
Printed Name of Notary

(SEAL)

DD 515970
Notary's Commission No.

