

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this _____ day of _____, 2014 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

CITY OF POMPANO BEACH, FLORIDA
(hereinafter referred to as "CITY"),
Whose principal place of business is
100 West Atlantic Boulevard, Pompano Beach, Florida 33060

WHEREAS, SBBC owns real property at 600 NE 13th Avenue within the City of Pompano Beach, Florida, known as Pompano Beach High School on which Building 12 is located as shown on **Exhibit "A"**, hereinafter referred to as ("Leased Property"); and

WHEREAS, the CITY leased from SBBC, Building No. 12 at Pompano Beach High School since 2004 for their pre-school program; and

WHEREAS, the CITY in conjunction with SBBC's educational program, "Amanda's Place", occupied Building No. 12 which fostered a feeder program from the Amanda's Place program to the City of Pompano Beach pre-school program; and

WHEREAS, Building No. 12 is no longer conducive for the programs due to certain identified defects, structural, and safety issues regarding the Building. Therefore, the City and the SBBC have agreed to relocate the City's program and Amanda's Place to another suitable SBBC owned facility; and

WHEREAS, the CITY's lease of Building No. 12 will expire on February 17, 2014; however, to prevent the disruption of school activities in the middle of the school year, the CITY desires to extend the lease of Building No. 12 to June 30, 2014, and commence a new lease with the SBBC at another SBBC owned facility for another ten (10) year term as permitted by Section 1013.15, Florida Statutes; and

WHEREAS, to allow the continued occupation of Building No. 12 until June 30, 2014, appropriate District and CITY staff (which included safety, fire, and building officials) conducted a joint safety inspection of Building 12 on November 26, 2013 to ascertain if the Building could be safely occupied for the desired period:

WHEREAS, the conclusion from the joint inspection was that certain identified safety issues regarding the Building must be corrected by the CITY to allow the continued occupation of the Building until June 30, 2014; and

WHEREAS, the CITY has since corrected the identified safety issues.

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 – CONDITIONS

2.01 **Leased Property.** SBBC does hereby extend the CITY's lease of a portion of Pompano Beach High School, identified as Building 12 as shown on **Exhibit "A"**, attached hereto as "Leased Property", in this Agreement.

2.02 **Lease Term and Rate.** Unless terminated earlier pursuant to Section 3.04 of this Agreement, the term of this Lease is for four (4) months and eleven (11) days commencing on February 18, 2014. The CITY shall pay SBBC a rental fee of One Dollar (\$1.00), payable to SBBC upon execution of this Agreement by all parties.

2.03 **Hours of Operation.** The Leased Property herein may be used 24 hours a day, 7 days per week. The parking lots will be shared; however, during school hours, the SBBC will have priority use of the shared parking lots.

2.04 **ADA.** The SBBC hereby represents to the best of its knowledge that the property herein leased meets all accessibility requirements of the Federal Americans with Disabilities Act (ADA), Florida Accessibility Code for Building construction implemented under the Florida American with Disabilities Implementation Act.

2.05 **Asbestos.** The SBBC hereby represents that the property described herein is free from friable asbestos as defined in the Asbestos Hazard Emergency Response Act (AHERA), 40 CRF Part 763, Asbestos Materials in Schools, October 30, 1987, and Florida State Requirements for Educational Facilities (SREF) 1999, whichever is more stringent.

2.06 **Transfer.** The CITY shall not assign or sublet the facilities delineated in this Lease, or use said facilities or any part thereof, for any purpose other than set out in the lease.

2.07 **Condition of Premises.** The CITY shall accept the facilities "As-is". Removal or change of location of any appliance of equipment, occasioned by the CITY's use of said facilities, shall be made by the CITY at the CITY's expense, but no such removal or change shall be made without prior approval by the SBBC's designee (which approval shall not be unreasonably withheld). Any appliance or equipment removed or relocated by the CITY shall be replaced as found.

2.08 **Improvements.** The location of any and all improvements to be placed by the CITY on the Leased Property shall first be reviewed by the SBBC's Chief Facilities and Construction Officer and the SBBC's Building Official or their designees. The SBBC's Building Official or designee may grant approval of the plans for the proposed improvements upon determination that it meets SBBC's building requirements. However, such approval by SBBC's designee shall not be unreasonably withheld. However, the SBBC shall have absolute control over the location of any and all improvements before they are placed on the Leased Property. Any improvements placed on said Leased Property without the prior written approval of the SBBC's Chief Facilities and Construction Officer and the SBBC's Building Official or their designees as to location shall immediately be removed or relocated within ten (10) days of written demand by SBBC unless the parties agree that the improvements should remain whereby this Agreement will be amended to reflect the use and responsibility of the improvements.

- a. The CITY agrees to obtain all necessary permits and approvals and to contract with a contractor, if applicable, for the construction of any improvements to the Leased Property.
- b. Before the commencement of construction project, the CITY shall require the engaged contractor, if applicable, to furnish performance and surety bonds that guaranty the completion of the project and the performance of the work necessary to complete the project; as well as, full payment of all suppliers, material men, laborers, or subcontractors employed to provide services to complete the project. The CITY agrees to deliver a copy of the surety bond to the SBBC. Such bonds shall remain in effect for one (1) year after completion of the project. The contractor, if applicable, will cause the correction of any defective or faulty work or materials that appear after the completion of the project within the warranty period of such work performed.
- c. The CITY shall accept the facilities "As-is", subject to the provisions of 2.08(a). Removal or change of location of any structural components of the Building, occasioned by the CITY's use of said facilities, shall be made by the CITY at the CITY's expense, but no such removal or change shall be made without prior approval by the SBBC's Chief Facilities and Construction Officer or designee (which approval shall not be unreasonably withheld).

2.09 **Heating and Air Conditioning ("HVAC").** The SBBC will provide heating and air conditioning services for the days and times as indicated in Section 2.03 herein. However, the CITY shall be responsible for the maintenance and repair of the heating and air conditioning equipment within the Leased Property.

2.10 **Light Fixtures.** The CITY shall be responsible for the maintenance, replacement of all bulbs, lamps, tubes, and starters used in such fixtures for the purpose of furnishing light during the term of this Agreement.

2.11 **Maintenance Repairs.** The CITY shall be responsible for the maintenance of the Leased Property.

2.12 **Utilities.**

- a. As necessary, the SBBC will promptly pay for its proportionate share of water, electric light rates or charges to the applicable parties, and provide custodial services for the two (2) classrooms of the Leased Property utilized by the SBBC.
- b. The CITY will promptly pay for its proportionate share of water, electric light rates or charges to the respective providers, and provide custodial services for its portion of the Leased Property.
- c. The SBBC and the CITY will provide for their own telecommunication systems to the Leased Property.

2.13 **Indemnification.** To the extent permitted by law, CITY and SBBC each agree to indemnify, defend and hold the other, including their officers, agents and employees, harmless from and against any and all claims, damages, losses, liabilities, causes of action of any kind or nature whatsoever arising out of or because of the use and occupancy of any facilities licensed hereunder, providing that if such claim, damage, loss, liability or cause of action is due to the joint or concurrent negligence of the indemnitor and the indemnitee, their respective responsibilities hereunder shall be in the same proportion that the negligent acts or omissions of each contributes thereto. This indemnification shall not be limited to the amount of comprehensive general liability insurance that each party is required to provide under this Agreement. Each party reserves the right to select its own counsel in any such proceeding and all costs and fees associated therewith shall be the responsibility of the indemnitor under this indemnification agreement. Compliance with the foregoing shall not relieve the indemnitor of any liability or other obligation under this Agreement. Nothing contained herein is intended nor shall be construed to waive any party's rights, immunities or limits to liability existing under the common law or Section 768.28, Florida Statutes.

2.14 **Insurance.** Upon execution of this Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or self-insurance evidencing the required coverage. In the event any insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of that period of the contract and extension there under is in effect.

2.15. **Required Insurance Coverages.** 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 the equivalent reserves in its self-insurance program with the following coverages and minimum limits of liability:

2.15.1 Worker's Compensation Insurance; Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

2.15.2 Automobile Liability Insurance; Owned, Non-Owned and Hired Automobile Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

2.15.3 Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive covenants: \$1,000,000 Combined Single Limit, per occurrence, Bodily Injury and Property Damage. Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

2.15.3.1 Premises and Operations;

2.15.3.2 Independent Contractors;

2.15.3.3 Product and Complete Operations Liability; and

2.15.3.4 Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement contained in Section 13 of this Agreement.

2.15.4 Damage to Rented Premises with limits of \$1,000,000 per occurrence/aggregate.

2.15.5 These insurance requirements shall not relieve or limit the liability of either party. Both parties reserve the right to require other insurance coverage that it deems necessary depending upon the risk of loss and exposure to liability.

2.15.6 Violations of the terms of this section and its subparts shall constitute a breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement and all rights, title and interest shall thereupon cease and terminate.

2.15.7 Required conditions; Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

2.15.7.1 All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida. (Certificate Holder: School Board of Broward County, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301).

2.15.8 No activities under this Agreement shall commence until the required certificates of insurance have been received and approved by the Risk Managers of each party.

2.16 **Background Screening**: City agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its non exempt 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 City or its personnel providing any services under the conditions described in the

previous sentence. City shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to City and its non exempt personnel. The parties agree that the failure of City 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. To the extent permitted by law, City agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in City's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes. The City will provide SBBC evidence of successful screening of any City's personnel who are exempt pursuant to Section 1012.468(2)(b), Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **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 or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

3.02 **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 manner arising out of any contract.

3.03 **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.

3.04 **Termination.** Either party may cancel this Agreement without cause during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.05 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to

SBBC in a format that is compatible with SBBC's information technology systems. 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. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.06 **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 Documents. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **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.

3.08 **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 constructions, be Construed more severely against one of the parties than the other.

3.09 **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.

3.10 **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.

3.11 **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.

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

3.13 **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 assignment of this Agreement, without limitation, the partial Assignment of any right to receive payments from SBBC.

3.14 **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 of 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.

3.15 **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.

3.16 **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.

3.17 **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, Facility Planning and Real Estate
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To CITY: City Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

With a Copy to: Director, Parks and Recreation
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

3.18 **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 provision of this Agreement.

3.19 **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.

3.20 **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.

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"FOR SBBC"

(CORPORATE SEAL)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

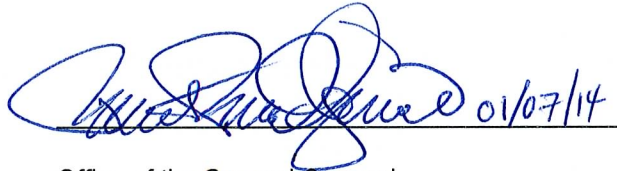
By: _____

Patricia Good, Chair

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

 01/07/14

Office of the General Counsel

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____

LAMAR FISHER, MAYOR

By: _____

DENNIS W. BEACH

CITY MANAGER

Attest:

(SEAL)

MARY L. CHAMBERS

CITY CLERK

Approved As To Form:

GORDON B. LINN

CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number