

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, 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 program due to certain identified defects, structural, and safety issues regarding the Building. Therefore, the SBBC and the City 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 was set to expire on February 17, 2014; but on January 22, 2014, the School Board and subsequently the City approved extension of the lease to June 30, 2014; and

WHEREAS, SBBC owns real property at 800 NW 16th Street within the City of Pompano Beach, Florida, known as Sanders Park Elementary School on which Portable Nos. 667C, 414P, 351VE, and 1561P are located as shown on **Exhibit "A"**, hereinafter referred to as ("Leased Property"); and

WHEREAS, the CITY and SBBC have determined that Portable Nos. 667C, 414P, 351VE, and 1561P at Sanders Park Elementary School are a suitable location for the CITY's pre-school program; and

WHEREAS, SBBC and the CITY agrees that the City will utilize designated green space and parking lot located at Sanders Park Elementary School; and

WHEREAS, SBBC and the CITY wish to enter into a five (5) year lease to enable use of the Leased Property as permitted by Section 1013.15, Florida Statutes.

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 lease to the CITY a portion of Sanders Park Elementary School, identified as Portable Nos. 667C, 414P, 351VE, and 1561P as shown on **Exhibit "A"**, attached hereto as "Leased Property", in this Agreement.

2.02 **Lease Term and Rate.** The term of this Lease is five (5) years commencing on July 1, 2014, unless terminated earlier pursuant to Section 3.05 of this Agreement. The CITY shall pay SBBC an annual rental fee of One Dollar (\$1.00), payable to SBBC upon execution of this Agreement by all parties and on the yearly anniversary of this Agreement.

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

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 Leased Property.** Except as specified herein, the CITY shall accept the Leased Property in its "as is" condition.

2.08 **Changes to Leased Property.** Except for those improvements listed in Exhibit "B" which is attached hereto and incorporated herein by reference, no improvements or any removal or change of location of any structural components of the portables located upon the Leased Property shall be made by the CITY without having first obtained the prior written approval of SBBC's Chief Facilities and Construction Officer and SBBC's Building Official or their designees, which approval shall not be unreasonably withheld. SBBC's Building Official or designee may grant approval of any proposed plan(s) for improvements to the

Leased Property upon determination that the plan(s) meet SBBC's building requirements. However, SBBC shall have absolute control over the location of any and all improvement(s) before they are placed upon the Leased Property. Any improvement(s) 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 notice by SBBC unless the parties' representatives agree that that this Agreement should be amended to permit the parties' respective responsibilities concerning the improvements and their use. Except as otherwise provided in this Agreement, any removal or change of location of any structural components of the portables located upon the Leased Property shall be made by the CITY at the CITY's sole expense and only after first complying with the requirements of Section 2.08(a) of this Agreement. Any appliance or equipment removed or relocated from the Leased Property by the CITY shall be replaced at the end of this Agreement in its original placement.

- (a) Except for those improvements listed in Exhibit "B", the CITY agrees to obtain all necessary permits and approvals and to contract with a contractor, if applicable, for the construction of any improvement(s) to the Leased Property.
- (b) Before the commencement of any improvements other than those listed in Exhibit "B," the CITY shall require the engaged contractor, if applicable, to furnish performance and surety bonds that guarantee the completion of the project and the performance of the work necessary to complete the project; as well as the full payment of all suppliers, material men, laborers or subcontractors employed to complete the project. The CITY agrees to deliver a copy of the surety bond to the SBBC prior to the commencement of any work to perform the improvements. 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 parties agree that the CITY's program to be conducted upon the Leased Property necessitates the improvements listed in Exhibit "B" a copy of which is attached hereto and is incorporated herein by reference. The parties agree that SBBC shall construct the improvements on the Leased Property listed on Exhibit "B" and that the CITY shall pay SBBC a sum not to exceed Ninety Six Thousand and Two Hundred Dollars (\$96,200.00) for such improvements. SBBC shall issue an invoice to CITY after completion of the improvements for the actual cost of constructing the improvements up to the foregoing amount and CITY shall pay said invoice within thirty (30) days of its receipt.
- (d) The parties agree that Portable No. 1021PK as shown on Exhibit "A" shall be removed by SBBC and its location shall be converted by SBBC to green space. Except for any fencing specified in Exhibit "B," SBBC shall bear the expense of such removal and

conversion to green space. The CITY will be permitted under this Agreement to utilize the resultant green space as an outdoor play area for the CITY's program.

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 and repair of the Leased Property and also provide custodial services for the Leased Property.

2.12 **Utilities.**

a. The CITY will promptly pay for its proportionate share of gas (if applicable), water and sewer, power, electric light rates or charges, which shall become due on the first day of each month commencing July 1, 2014, and payment shall be delivered no later than the fifth day of each month. The CITY's use of electrical consumption shall be measured by a separate Florida Power & Light (FPL) meter serving the Leased Property and CITY shall be billed directly by FPL for such service. The CITY's proportionate share of water and sewer charges shall be based upon twenty-five (25) occupants [five (5) adults and twenty (20) students] utilizing the Leased Property at a rate of \$51.01/per year/per occupant for an total annual charge of \$1,275.25 to be pro-rated and paid by the CITY at the monthly rate of \$106.27. If the number of occupants of the Leased Property changes during the term of this Agreement, the amount payable by the CITY for water and sewer shall be adjusted accordingly. Any payments due from the CITY under this Agreement shall be made payable to the order of "The School Board of Broward County, Florida" and delivered to Director – Facility Planning and Real Estate Department, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.

b. The SBBC will provide 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 Reciprocal Use Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or self-insurance evidencing the required coverage.

2.15 **Required Insurance Coverages.** Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes that each party is self-insured for general liability under Florida Statutes 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. City further acknowledges to maintain, at its sole discretion, Specific Excess General Liability in the amount of \$5,000,000 combined single limit per occurrence, solely for any liability resulting from entry of a claims-bill pursuant to Section 768.28(5) Florida Statutes, or liability imposed pursuant to Federal Law.

In the event a governmental entity maintains Commercial General Liability, the governmental entity shall maintain a limit of liability not less than \$1,000,000 Each Occurrence / \$2,000,000 General Aggregate; and in the event Commercial Automobile Liability is maintained, the governmental entity shall maintain not less than a \$1,000,000 Combined Single Limit. The governmental entity 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.

2.15.1 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).

2.15.2 Those governmental entities that maintain Commercial General Liability, agree to endorse the SBBC as an additional insured under the endorsement, GC 2011 01 96 Additional Insured – Managers or Lessors of Premises, or an endorsement providing equal or similar scope of coverage.

2.15.3 Fire Legal Liability damage to Rented Premises with limits of \$500,000 per occurrence/aggregate as a condition for the reduced limit of insurance. The City is not permitted to utilize stoves, ovens, microwave ovens, hotplates or any devices which have the potential to cause a fire on SBBC Property. SBBC grants permission for the City's vendor to utilize catering warmers during the summer program. The City's vendor will be required to name The School Board of Broward County, Florida, its officers, employees and agents as additional insured with respect to liability on behalf of the vendor. The general liability policy will be primary of all other valid and collectible coverage maintained by The School Board of Broward County, Florida.

2.15.4 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.

2.15.5 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 and all rights, title and interest shall thereupon cease and terminate.

2.15.6 Required conditions; self-insurance and/or liability policies must contain the following provisions. In addition, the following wording in section 2.15.6.1 below must be included in the Certificate of Insurance's description of operations:

2.15.6.1 All self-insurance and/or liability policies are primary over all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School Board of Broward County, Florida 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301).

2.15.7 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.

2.16 **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 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.

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 matter arising out of any contract.

3.03 **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, contributions to unemployment compensation funds or insurance for the City or the City's officers, employees, agents, subcontractors or assignees. No right to City retirement, leave benefits or any other benefits of City employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. City shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the SBBC or the SBBC's officers, employees, agents, subcontractors or assignees.

3.04 **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.

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon ninety (90) days written notice to the other parties of its desire to terminate this Agreement.

3.06 **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 (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 Agreement may be terminated by the non-defaulting party upon thirty (30) days 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 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **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.

3.09 **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.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, 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.

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 **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.

3.13 **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.

3.14 **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.

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

3.16 **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.

3.17 **Incorporation by Reference.** Exhibit "A" and Exhibit "B" attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference. In the event of any conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the terms of this Agreement shall supersede and prevail over the terms in the Exhibits.

3.18 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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
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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
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To CITY:	City Manager 100 West Atlantic Boulevard Pompano Beach, Florida 33060
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With a Copy to:

Director, Parks and Recreation
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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. In the event any of the licensed facilities, or any part thereof, shall be destroyed by fire or any other cause, or if any other casualty or any unforeseen occurrence shall render the fulfillment of this Agreement by either party impossible, then and thereupon, this Agreement shall be modified to exclude the use of the damaged licensed facility until such time as the owning party, at its discretion, returns the facility to an operable condition.

3.25 **Survival.** All representations and warranties made herein regarding 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.

3.26 **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.

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"FOR SBBC"

(CORPORATE SEAL)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

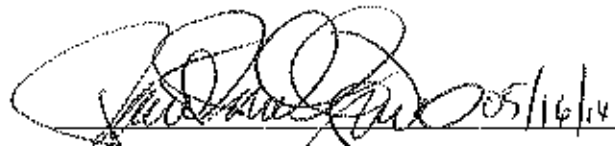
By: _____

Patricia Good, Chair

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content


Office of the General Counsel

"FOR CITY"

ATTEST:

CITY OF POMPANO BEACH, FLORIDA, a
municipal corporation of the State of Florida

CITY Clerk

Lamar Fisher, Mayor

APPROVED AS TO FORM & LEGALITY

Date: _____

City Attorney