

JOINT USE AGREEMENT

[Relating to Use of Miami Beach Senior High School – School Playfield Area, Basketball Courts, and Parking Lot]

THIS JOINT USE AGREEMENT (“Agreement”), made and entered into this _____ day of _____, 2019, between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida (the “**BOARD**”), and the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida (the “**CITY**”). The BOARD and CITY are sometimes referred to in this Agreement individually as “**Party**” and collectively as the “**Parties**”.

WITNESSETH

WHEREAS, the BOARD and CITY are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of the students of Miami-Dade County Public Schools (the “**District**”) and residents of the CITY; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property known as Miami Beach Senior High School, located at 2231 Prairie Avenue, Miami Beach, Florida 33139 (“**School**”); and

WHEREAS, the CITY has approached the BOARD with a request to use the Stephen Ross Field at the School (“School playfield area”) for the CITY’s recreational programs; and

WHEREAS, the CITY has agreed to provide the BOARD an annual contribution of \$22,000 towards a portion of the cost of maintenance of the DEMISED AREA (as hereinafter defined); and

WHEREAS, the Parties are desirous of entering into this Agreement to allow their respective use of the School playfield area for recreational purposes, under the terms and conditions as set forth below; and

WHEREAS, The School Board of Miami-Dade County, Florida, at its meeting of _____, 2019, School Board Agenda item F-____, Board Action # _____, approved entering into this Agreement; and

WHEREAS, the CITY of Miami Beach, by the adoption of Resolution No. 2017-30078, at its meeting of October 31, 2017, approved this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the BOARD and CITY agree as follows:

I.

RECITALS

The above recitals are true and correct and are incorporated herein by reference.

II.

PREMISES TO BE JOINTLY USED

Effective with the Commencement Date of this Agreement (as defined in Article III below), the Parties agree to jointly use the School playfield area, including the basketball courts as well as the School parking lot, all as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (collectively the "**DEMISED AREA**"), together with all improvements currently located or to be constructed thereon.

III.

TERM

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (the "**Effective Date**"). The initial term of this Agreement shall be for a period of five (5) years, commencing upon the latter date of issuance of a Certificate of Occupancy, Certificate of Completion, or equivalent ("**CO**") by the BOARD'S Building department for the Fence Work (as hereinafter defined), which document shall be attached hereto and made a part hereof as **Exhibit "B"** (hereinafter referred to as the "**Commencement Date**").

IV.

CONSIDERATION

In addition to the provisions set forth in Article VII, the CITY shall pay to the BOARD as consideration for use and occupancy of the DEMISED AREA throughout the term of this Agreement, and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, beginning on the Commencement Date, and on the anniversary date of the Commencement Date each year thereafter.

V.

USE OF DEMISED AREA

The DEMISED AREA as identified in Exhibit "A" shall be used by the CITY only for the operation of recreational programs sponsored, organized and supervised by the CITY, and by the BOARD for the School's recreational and educational programs, and for no other purposes. The CITY covenants and agrees to accept the DEMISED AREA in its "as-is", "where-is" condition and basis with all faults as of the Effective Date of this Agreement, subject to all easements, covenants or other encumbrances of record. The BOARD makes no representations or warranties of any type or nature whatsoever, either expressed or implied, as to the usefulness, physical condition or appropriateness of the DEMISED AREA for the CITY'S operations or any specific use. The CITY, by executing this Agreement, agrees and acknowledges that the BOARD has made no representations whatsoever regarding the DEMISED AREA, including with respect to its

environmental condition. The CITY represents that it is relying and will continue to rely solely on its own investigations of the DEMISED AREA in its decision to occupy or use it, and the CITY further acknowledges and agrees that the BOARD shall not indemnify the CITY in any way with respect to the condition of the DEMISED AREA. The provisions of this paragraph shall survive the expiration or the early termination or cancellation of this Agreement.

Effective with the Commencement Date, the BOARD shall have full control, custody, right and use of the DEMISED AREA during regular school hours on regular school days (including summer school) and during after school hours and Saturdays as required for, but not limited to, practices and home games, tournaments, special School events and functions, intramural sports, and extracurricular athletic activities (the “**BOARD’S Period of Use**”). Notwithstanding this provision, the CITY acknowledges and agrees that the BOARD’S Period of Use may be modified annually as established through the BOARD’S approved Elementary and Secondary School Calendar (“**School Calendar**”), or as otherwise established by the School Administrator. Subject to the above, effective with the Commencement Date, the CITY shall have full control, custody, right and use of the DEMISED AREA during the following periods, from 8:00 a.m. to 4:00 p.m. on Sundays, (the “**CITY’S Period of Use**”), unless the DEMISED AREA is required by the BOARD, as outlined below.

The Parties acknowledge and agree that the BOARD may require use of the DEMISED AREA on a Sunday from time to time throughout the term of this Agreement. In such event, the BOARD shall notify the CITY, through the CITY’s designated representative, a minimum of seven (7) calendar days prior to such usage, and the BOARD shall have use of the DEMISED AREA during the specified Sunday; provided, however, that if the request date will interfere with the CITY’S operations or previous obligations, the BOARD will be required to provide the CITY with a list of available replacement dates during the BOARD’S Period of Use, for the City to use as a replacement date.

The School Administrator and the CITY’s designated representative shall meet prior to the Commencement Date of this Agreement on a quarterly basis thereafter prior to the start of the first and third quarters of each regular school year, as established through the BOARD’S approved School Calendar, or as soon thereafter as possible, to discuss and establish any additional days during non-school hours, other than Sundays, when the DEMISED AREA is available for use by the CITY during the upcoming school year (“**Quarterly Scheduling Meeting**”). At least thirty (30) calendar days prior to the Semi-Annual Scheduling Meeting, the CITY shall provide the School Administrator with a proposed listing of additional days during non-school hours, other than Sundays, when the CITY wishes to utilize the DEMISED AREA during the upcoming school year, for approval by the School Administrator and the North Region Office. The approved additional days, as established during each Quarterly Scheduling Meeting (the

“Approved Additional CITY Days”) may be modified from time to time throughout the school year by mutual agreement of the Parties, or their designees, in writing, provided the CITY requests such additional usage, not previously included in the Approved Additional CITY Days, no later than seven (7) calendar days prior to such requested use, for approval by the School Administrator and the North Region Office. The CITY shall request approval of such additional days of use in writing through the School Administrator, which approval shall not be unreasonably withheld, provided such use does not conflict with the BOARD’S operations or previous obligations. Notwithstanding the foregoing, the Parties acknowledge and agree that the CITY’S hours of use of the DEMISED AREA during the Approved Additional CITY Days shall not exceed the hours of 8:00 a.m. to 4:00 p.m., unless otherwise agreed to in writing by the BOARD. The Parties understand and agree that the Approved Additional CITY Days shall be for the particular school year only, and shall be reaffirmed or modified semi-annually, as provided hereinabove.

The use of the DEMISED AREA by the CITY for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited, and the sale or consumption of alcoholic beverages is expressly prohibited. Neither Party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, including BOARD Policies, the City, State, or Federal government upon the DEMISED AREA.

The CITY agrees that the DEMISED AREA shall not be used for storage of construction or maintenance materials, or for the storage or long-term parking of vehicles, and it shall secure and lock all perimeter and parking lot gates at the completion of the CITY’S daily period of use, and shall remove all unauthorized vehicles stationed thereon. The CITY shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the BOARD or designee.

In addition, the CITY shall comply with all School safety and security criteria, as established by the School Administrator, and provide proper security and supervision of the DEMISED AREA at all times during the CITY’S Period of Use, including the Approved Additional CITY Days. The CITY acknowledges and agrees that the School Administrator shall have overall responsibility for any operational issues impacting the DEMISED AREA and/or School site, including without limitation, building security, safety, etc., and the CITY shall comply with all such requirements established by the School Administrator with respect thereto. The CITY shall promptly notify the BOARD or its designee of any and all notices or communications received by the CITY from any jurisdictional entity, as well as provide notice to the BOARD of any incidents that occurred, in relation to any safety issues or law enforcement incidents on the DEMISED AREA or elsewhere on the School site. Thereafter, the CITY shall provide the BOARD with all information reasonably requested by the BOARD, and shall cooperate with the BOARD in implementing any policies or procedures by the CITY required to

mitigate any further incidents in this regard. This representation by the CITY shall constitute a material inducement for the BOARD to enter into this Agreement.

The Parties agree that the DEMISED AREA shall be closed from time to time to complete maintenance activities, with the method, scope and scheduling of any such closure to be determined by the BOARD or designee. In addition, the Parties acknowledge and agree that the DEMISED AREA may be closed or its use modified as required to effectively respond to Federal, State, School Board or local criteria or Emergency Orders, as such Emergency Orders may currently exist or be subsequently modified or amended, dealing with pandemics, including without limitation, any social distancing requirements, site supervision to Ensure compliance, requirements for Personal Protective Equipment, closure of facilities or restrictions on maximum capacity ("**Emergency Orders**"). Enforcement of these Emergency Orders by the CITY is a condition precedent to its occupancy and use of the DEMISED AREA during the CITY'S Period of Use.

VI.

IMPROVEMENTS TO THE DEMISED AREA

Subsequent to the Effective Date of this Agreement, the CITY shall provide payment to the BOARD, in an amount not to exceed a total of \$32,740.53, which funds shall be used by the BOARD to design and install new chain link fencing in the amount of \$22,040.53, with a minimum of 6 feet in height, within the DEMISED AREA ("**Fence Work**"). As part of the Fence Work, the Board shall install landscaping (Cocoplum hedge), in an amount of \$10,700.00 to conceal the Fence, , at the City's sole cost and expense. The Fence Work shall be as substantially depicted in **Exhibit "C"** attached hereto and made a part hereof. The CITY expressly acknowledges and agrees that the BOARD shall not commence any of the Fence Work or any design or construction activities until the BOARD has received from the CITY the full amount of the funds noted above for the Fence Work. The CITY further acknowledges and agrees that the Fence Work is a condition precedent to the CITY's use of the DEMISED AREA.

The Fence Work shall be completed by the BOARD, at the CITY'S sole cost and expense, which total cost shall not exceed \$32,740.53. Any substantive change to the Fence Work shall be approved jointly by the BOARD and the CITY, prior to implementation. The CITY acknowledges and agrees that the CITY's use of the DEMISED AREA shall not commence until the CO is issued for the Fence Work.

The BOARD'S Building department shall be the entity responsible for reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the Fence Work. The Fence Work shall commence only after issuance of proper permits, in conformance with the requirements of the BOARD'S Building department or other

appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Requirements for Educational Facilities, and the District criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by the BOARD upon completion of the Fence Work.

Failure of the BOARD to complete the Fence Work within ninety (90) days of receipt by the BOARD of the \$32,740.53 funds noted above, or some other period of time mutually agreed to by the Parties, shall constitute a breach under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

VII.

MAINTENANCE

The BOARD shall be responsible for providing all maintenance, repair and upkeep of the DEMISED AREA. All such maintenance services will be provided in compliance with the BOARD'S standards, operating procedures and frequency of service. As consideration for the BOARD retaining maintenance responsibilities of the DEMISED AREA, the CITY shall provide an annual contribution of \$22,000 to the BOARD throughout the Term of this Agreement, and any renewal(s) thereof ("**CITY Maintenance Contribution**"). The CITY shall remit payment of such CITY Maintenance Contribution directly to the School beginning on the Commencement Date of the Agreement, and on the anniversary date of the Commencement Date each year thereafter.

Notwithstanding the above, the CITY shall be responsible for pick-up and removal of trash and litter within the DEMISED AREA generated during the CITY's Period of Use, including the Approved Additional City Days. The CITY shall also be responsible for making any required repairs to the DEMISED AREA, at the CITY's sole cost, where the BOARD can substantiate that such improvements were damaged as a result of the actions or negligence of the CITY. In addition, the BOARD shall be responsible for pick-up and removal of trash and litter within the DEMISED AREA generated during the BOARD'S Period of Use.

VIII.

INSURANCE

The CITY shall, on or before the Commencement Date of this Agreement, and all times during the Term of this Agreement, provide the BOARD with confirmation of the CITY's self-insurance program in a form and substance acceptable to the BOARD or its designee,

IX.

UTILITIES AND OTHER SERVICES

In the event the CITY utilizes or constructs any improvements requiring utility service, as

determined by the BOARD, the CITY shall install separate utility services and/or meters in its name and shall pay for all such utility services, including without limitation, water, sewer, electricity, gas, and trash collection, at the CITY's sole cost and expense.

X.

INDEMNIFICATION AND HOLD HARMLESS

The CITY does hereby agree to indemnify and hold harmless the BOARD, to the extent of the limitations within Florida Statutes, Section 768.28, subject to the provisions in the Act whereby the CITY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the CITY arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the CITY. However, nothing herein shall be deemed to indemnify the BOARD from any liability or claim arising out of the negligent performance or failure of performance of the BOARD or as a result of the negligence of any unrelated third party.

The BOARD does hereby agree to indemnify and hold harmless the CITY, to the extent of the limitations within Florida Statutes, Section 768.28, subject to the provisions in the Act whereby the BOARD shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the BOARD arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the BOARD. However, nothing herein shall be deemed to indemnify the CITY from any liability or claim arising out of the negligent performance or failure of performance of the CITY or as a result of the negligence of any unrelated third party.

The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement.

XI.

NO LIABILITY FOR PERSONAL PROPERTY

The Parties agree to insure or self-insure their interests in personal property to the extent each Party deems necessary or appropriate and hereby waive all rights to recovery for loss or damage of such property by any cause whatsoever. The Parties hereby waive all rights of subrogation under any policy or policies they may carry on property placed or moved on the DEMISED AREA.

XII.

LIABILITY FOR DAMAGE OR INJURY

The BOARD shall not be liable for any damage or injury which may be sustained by the CITY or any persons on or about the DEMISED AREA, other than damage or injury resulting from the negligent performance or failure of performance on the part of the BOARD, its agents, representatives or employees, and in such event the BOARD'S liability shall be subject to the limitations of Section 768.28, Florida Statutes. The BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

The CITY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on or about the DEMISED AREA, other than damage or injury resulting from the negligent performance or failure of performance on the part of the CITY, its agents, representatives or employees, and in such event the CITY's liability shall be subject to the limitations of Section 768.28, Florida Statutes. The CITY shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

The provisions of this Article shall survive the expiration, or early termination or cancellation of this Agreement.

XIII.

ASSIGNMENT AND SUBLETTING

The CITY shall not, at any time during the term of this Agreement, sublet in part or whole the DEMISED AREA, or assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or allow any other individual or entity to operate or manage the DEMISED AREA, or permit the DEMISED AREA to be occupied by other persons, firms, corporations, or governmental units, without the BOARD'S prior written consent, which may be withheld at the BOARD'S sole discretion. Any unauthorized assignment, sublet or otherwise, shall constitute a material breach under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

XIV.

EXTENSION OF AGREEMENT

If not in default in performance of the obligations set forth in this Agreement, the CITY and the BOARD shall have the right, but not the obligation, to extend this Agreement, under the same terms and conditions set forth herein, for two (2) additional terms of five (5) years each from the expiration of the original term or any renewal thereof; provided the CITY gives written notice to the BOARD, as set forth in Article XXVII, at least ninety (90) days prior to the expiration of the then current Term and the City Commission approves the extension. The Parties acknowledge and agree that any extension of the Term shall be accomplished through the execution by the Parties of a

written amendment to this Agreement.

XV.

CANCELLATION

In addition to the provisions of Articles XVI and XXVIII, the BOARD and CITY shall each have the right to cancel this Agreement without cause or penalty, by giving the other Party written notice at least one hundred eighty (180) days prior to the effective date of said cancellation. In the event of cancellation by either Party, the CITY shall surrender and vacate the DEMISED AREA in compliance with Article XX of this Agreement.

XVI.

DEFAULT

The BOARD shall notify the CITY in writing regarding the CITY's failure to perform or to comply with the terms and condition of this Agreement. If the CITY fails to cure the default within thirty (30) days after receiving written notice or does not provide the BOARD with a written response indicating the status of the CITY's curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the BOARD shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the CITY.

The CITY shall notify the BOARD in writing regarding the BOARD'S failure to perform or to comply with the terms and conditions of this Agreement. If the BOARD fails to cure the default within thirty (30) days after receiving written notice or does not provide the CITY with a written response indicating the status of the BOARD'S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the CITY shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the BOARD.

In the event of termination due to default by either Party, which default is not cured, the CITY shall surrender and vacate the DEMISED AREA in compliance with Article XX of this Agreement.

XVII.

PEACEFUL POSSESSION

Subject to the terms, conditions and covenants of this Agreement, the Parties agree that each Party shall and may peaceably have, hold and enjoy the DEMISED AREA, without hindrance or interference by the other Party.

XVIII.

RIGHT OF ENTRY

Other than in the event of an emergency and subject to the provisions of Article XXXI, after first providing reasonable notice to the CITY, the BOARD, or any of its agents, representatives or employees, shall have the right to enter the DEMISED AREA during the CITY's Period of Use, including the Approved Additional City Days, to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISED AREA, provided such activities do not unreasonably interfere with the CITY's use of the DEMISED AREA.

XIX.

TAXES AND REGULATORY COMPLIANCE

The CITY shall be responsible for the collection and payment of any taxes, fees, operating permits, licenses, or other assessments, if any, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the DEMISED AREA or the School, as a result of the leasing, use, and occupancy of the DEMISED AREA by the CITY.

If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to the CITY'S lease, use or occupancy of the DEMISED AREA, the CITY acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, including any upgrades, modifications or changes, at the CITY's sole cost and expense.

Non-compliance with the provisions of this Article XIX shall be deemed a material breach of this Agreement.

XX.

SURRENDER OF PREMISES

Except as otherwise provided in this Agreement, the CITY agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the DEMISED AREA to the BOARD in good order and repair and in as good or better condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. The CITY shall promptly remove all of the CITY's personal property and other items belonging to the CITY from the DEMISED AREA, including any signage installed by the CITY. In addition, upon the expiration, cancellation or termination of this Agreement, the CITY agrees, at the BOARD'S sole option, to remove any improvements or other facilities constructed by the CITY on the DEMISED AREA pursuant to this Agreement, and to restore such area to the same or better condition as existed before the Commencement Date of this Agreement. In the event the BOARD elects to

retain said improvements constructed by the CITY, the CITY agrees to convey title to the improvements to the BOARD, without compensation due to the CITY.

The CITY shall promptly return all keys and other items belonging to the BOARD and shall coordinate with the BOARD to ensure a proper and timely surrender of the DEMISED AREA. Any of the CITY's personal property not removed within ten (10) days after expiration, termination or cancellation of this Agreement shall be considered abandoned.

XXI.

AMENDMENTS

In addition to the requirements set forth elsewhere in this Agreement, the BOARD and CITY, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement, which shall be accomplished through the execution by the Parties of a written amendment to this Agreement duly approved by the School Board in compliance with all applicable laws, including, without limitation, Section 1013.15(1), F.S. Such amendments shall be effective only when signed by the BOARD and CITY and shall be incorporated as part of this Agreement.

XXII.

NON-DISCRIMINATION

The Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, ethnic or national origin, citizenship status, mental or physical handicap, genetic information, age, political beliefs, sexual orientation, gender, gender identification, marital status, social and family background, linguistic preference, pregnancy or as otherwise provided by law, in the use of the DEMISED AREA. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the DEMISED AREA by a Party hereto has occurred, such event shall be treated as a Default hereunder.

XXIII.

LEGAL FEES AND COURT COSTS

In the event of any litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

XXIV.

CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida.

XXV.

SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment thereto is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by any deletion, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

XXVI.

WAIVER

No waiver of any provision shall be deemed to have been made unless such waiver is in writing and signed by the BOARD or the CITY. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

XXVII.

NOTICE AND GENERAL CONDITIONS

A. All notices or communications under this Agreement by either Party to the other (“**Notice**”), shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to BOARD:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools
Office of School Facilities
Attention: Chief Facilities Design & Construction Officer
1450 N.E. Second Avenue, Room 923
Miami, Florida 33132
Fax: 305-995-1918
E-mail: RPerez6@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida

School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: School Board Attorney
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net and ACraft@dadeschools.net

In the case of notice or communication to the CITY:

City of Miami Beach
Office of the City Manager
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: City Manager
Fax: 305-673-7782
E-mail: JimmyMorales@miamibeachfl.gov

With a copies to:

City of Miami Beach
Parks and Recreation Department
1701 Meridian Avenue, Suite 401
Miami Beach, FL 33139
Attn: Parks and Recreation Director
Fax: 305-673-7730
E-mail: JohnRebar@miamibeachfl.gov

City of Miami Beach
Office of the City Attorney
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: City Attorney
Fax: 305-670-7002
E-mail: RaulAguila@miamibeachfl.gov

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of the Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny all approvals or waivers required by the Agreement dealing with construction of improvements, changing periods or schedules of use, or any other routine operational issues. For purposes of this Agreement, the City Manager or his/her designee shall be the party designated by the City to grant or deny all approvals or waivers required by the Agreement dealing with construction of improvements, changing periods or schedules of use, or any other routine operational issues.

D. In addition to the above, for purposes of the Agreement, the Superintendent of Schools shall be the party designated by the BOARD to execute amendments to this Agreement within the authority granted to the Superintendent by the BOARD in this Agreement, and to grant

or deny any approvals required by the Agreement, including placing the CITY in default, or renewing, extending, canceling or terminating the Agreement.

E. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. “Day” as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the BOARD and Counsel for the CITY may deliver Notice on behalf of the BOARD and the CITY, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

XXVIII.

DAMAGE AND DESTRUCTION

Other than damage or destruction caused by the BOARD, as enumerated below, in the event the DEMISED AREA, in whole or in part, should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenable or unfit for the purposes intended, the CITY may cancel this Agreement with thirty (30) days advance written notice to the BOARD. If the CITY fails to cancel this Agreement, the BOARD may, at its sole option, either cancel this Agreement by giving written notice to the CITY, or repair or replace the damaged/destroyed facilities. In the alternative, in the event neither Party cancels the Agreement as provided above, the CITY, at its sole option, may repair/replace the damaged/destroyed facilities, at the CITY's expense. In the event the CITY elects to repair or replace the damaged/destroyed facilities, the CITY shall repair or replace same, and place in a safe, secure and useable condition within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the BOARD may, at its sole option, cancel this Agreement with ten (10) days advance notice.

The Parties agree that in the event of cancellation of the Agreement due to damage or destruction, the Parties shall surrender the DEMISED AREA in compliance with Article XX of this Agreement.

Any damage or destruction sustained to the DEMISED AREA where the CITY can substantiate that the improvements were damaged or destroyed as a result of the actions of the BOARD, shall be repaired by the BOARD, at the BOARD'S sole cost and expense.

XXIX.

SIGNAGE

The CITY may erect, at its sole cost and expense, identification signage within the DEMISED AREA, subject to the prior written approval of the BOARD, or its designee, and in conformance with all rules and regulations governing public schools.

Upon the termination, expiration or cancellation of this Agreement, the CITY shall remove from the DEMISED AREA, at the CITY's expense, any signage erected by the CITY, and restore the area to the same or better condition as existed prior to the CITY's installation of the signage.

XXX.

HAZARDOUS MATERIALS

For purposes of this Agreement, the term "**Hazardous Substances**" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law. The term "**Environmental Law**" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the School or DEMISED AREA, or arising from the CITY's use or occupancy of the DEMISED AREA, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the DEMISED AREA. The term "**Hazardous Substances Discharge**" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the term, at or from the DEMISED AREA, or that arises at any time from use or occupancy of the DEMISED AREA.

The CITY shall not cause or permit to occur: (a) any violation of any Environmental Law in the DEMISED AREA or School, or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the DEMISED AREA, or the transportation to or from the DEMISED AREA of any Hazardous Substance.

The CITY shall, at the CITY's expense, comply with all applicable Environmental Laws with respect to the DEMISED AREA and School. The CITY shall, at the CITY's own expense, make all submissions to, provide all information required by and otherwise fully comply with all

requirements of any governmental authority arising under Environmental Laws with respect to the DEMISED AREA during the term of this Agreement. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by the CITY with respect to the DEMISED AREA or School, then the CITY shall, at the CITY's own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. The CITY shall promptly notify the BOARD of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the DEMISED AREA or elsewhere on the School site, and shall promptly provide the BOARD with all information reasonably requested by the BOARD regarding the CITY's use, generation, storage, transportation or disposal of Hazardous Substances in or at the DEMISED AREA.

The obligations and liability of the Parties under this paragraph shall survive the expiration or termination of this Agreement.

XXXI.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, as all may be further amended from time to time and to the extent required by applicable law.

XXXII.

SUBORDINATION

Notwithstanding any other provisions of this Agreement, this Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases, and the rights of the School and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases or the School, or any portions thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, the CITY shall execute, within forty-five (45) calendar days of request, any certificate that the BOARD may request.

XXXIII.

FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS & ACCESS TO RECORDS

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public

Records Laws and laws relating to records retention. The CITY shall keep and maintain public records required by the BOARD to perform the service. The CITY shall keep records to show its compliance with this Agreement. The CITY's contractors and subcontractors must make available, upon request of the BOARD, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the CITY or its assigns, contractors or subcontractors which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the BOARD'S custodian of public records, the CITY shall provide the BOARD with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. The CITY shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the expiration or early termination or cancellation of this Agreement if the CITY does not transfer the records to the BOARD. The CITY, its assigns, contractors and subcontractors shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). The CITY, upon completion of the Agreement, shall transfer, at no cost to the BOARD, all public records in possession of the CITY or keep and maintain public records required by the BOARD to perform the service. If the CITY transfers all public records to the BOARD upon completion of the Agreement, the CITY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CITY keeps and maintains public records upon completion of the Agreement, the CITY shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BOARD, upon request from the BOARD'S custodian of public records, in a format that is compatible with the information technology systems of the BOARD.

The CITY shall incorporate this provision into every contract that it enters into relating to the DEMISED AREA.

IF BOTH PARTIES HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, pr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

XXXIV.

USE OF FACILITY AS A REVENUE GENERATOR

The BOARD shall at all times retain the exclusive right to be the sole authorizer and recipient

of revenue generators, in compliance with BOARD Policies, relating to the DEMISED AREA, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the CITY's rights to peaceful enjoyment of the DEMISED AREA.

XXXV.

REPRESENTATIONS

The CITY has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the CITY of its obligations under this Agreement, have been duly authorized by all necessary action of the CITY, and do not contravene or conflict with any rules, regulations, policies or laws governing the CITY, or any other agreement binding on the CITY. The individual(s) executing this Agreement on behalf of the CITY has/have full authority to do so.

The BOARD has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the BOARD of its obligations under this Agreement, have been duly authorized by all necessary action of the BOARD, and do not contravene or conflict with any rules, regulations, policies or laws governing the BOARD, or any other agreement binding on the BOARD. The individual(s) executing this Agreement on behalf of the BOARD has/have full authority to do so.

XXXVI.

MISCELLANEOUS PROVISIONS

- A. **RECORDATION:** This Agreement may not be recorded by either Party.
- B. **EMINENT DOMAIN:** If all or portions of the DEMISED AREA are taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. The CITY may pursue all available remedies for the taking but will have no interest in the award made to the BOARD.
- C. **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- D. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- E. **WAIVER OF TRIAL BY JURY:** THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT OR THE CITY'S AND BOARD'S USE OR OCCUPATION OF THE DEMISED AREA.

- F. **BROKERS:** Each Party represents that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement. If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of a Party ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the other Party ("**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination or cancellation of this Agreement.
- G. **PROMOTION:** Other than activities undertaken to promote the CITY's program(s) within the DEMISED AREA, the CITY shall not be permitted to use the DEMISED AREA for promotion or advertising of any type or nature whatsoever.
- H. **USE APPROVALS:** The CITY shall be responsible for determining and securing, at its sole cost and expense, all federal, state, county, municipal and/or other permits, licenses, use approvals, occupational licenses, certificates or approvals needed, if any, for the CITY's use and operations at the DEMISED AREA, prior to commencement of the Agreement.
- I. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one Agreement.
- J. **TAX-EXEMPT STATUS:** In addition to the provisions of Article XIX of this Agreement, the CITY acknowledges and agrees that in the event the tax-exempt status of the DEMISED AREA is rescinded or is at risk of being rescinded by Miami-Dade County or other appropriate jurisdictional governmental entity as a result of the use, occupancy or lease of same by the CITY or a Qualified Third Party, such rescission or potential rescission (as may be evidenced by a Notice of Proposed Property Taxes or any other official notice of any tax imposed by County, State or any other jurisdictional entity) shall constitute a default under this Agreement, and may result, at the BOARD'S sole option, in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement. Payment of any taxes so imposed shall be remitted to the BOARD within ten (10) days of receipt of notice, without demand.
- K. **INTELLECTUAL PROPERTY RIGHTS:** The CITY shall indemnify and hold harmless the

BOARD from and against all liability of any nature or kind, including damages, costs and expenses (including reasonable attorney's fees and costs at the trial level and through all appeals) for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of this Agreement. If the CITY uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exceptions that the CITY shall be liable for all royalties or costs arising from the use of such design, device or materials in any way involved in the activities contemplated by this Agreement.

- L. **SOVEREIGN IMMUNITY:** No provision contained in this Agreement shall be deemed a waiver of either Parties sovereign immunity.
- M. **SECURITY AND SUPERVISION:** The CITY shall provide proper supervision and security of the DEMISED AREA at all times during the CITY's Period of Use, including the Approved Additional CITY Days as further outlined in Article V of this Agreement.

XXXVII.

ENTIRE AGREEMENT

This Agreement and all Exhibits attached hereto, constitute the entire agreement between the Parties and supersede all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and the CITY.

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the BOARD and CITY have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

WITNESSES AS TO THE BOARD:

Print Name: _____

Print Name: _____

BOARD:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____

Alberto M. Carvalho
Superintendent of Schools

Date: _____

RECOMMENDED:

Jaime G. Torrens
Chief of Staff

Date: _____

**TO THE BOARD: APPROVED AS TO RISK
MANAGEMENT ISSUES:**

Office of Risk and Benefits Management

Risk and Benefits Officer
Date: _____

**TO THE BOARD: APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

School Board Attorney
Date: _____

**TO THE BOARD: APPROVED AS TO
TREASURY MANAGEMENT ISSUES:**

Office of Treasury Management

Treasurer
Date: _____

WITNESSES AS TO THE CITY:

CITY:

CITY OF MIAMI BEACH

Print Name: _____

By: _____

Name: _____

Title: _____

Date: _____

Print Name: _____

ATTEST:

City Clerk

Date: _____

**TO THE CITY: APPROVED AS TO
FORM, LANGUAGE & FOR EXECUTION:**

By: _____

City Attorney

Date: _____

EXHIBIT "A"
TO
JOINT USE AGREEMENT

DEMISED AREA

[consisting of ____ pages, including this title page]

DRAFT

EXHIBIT “B”
TO
JOINT USE AGREEMENT

CERTIFICATE OF OCCUPANCY, CERTIFICATE OF COMPLETION OR EQUIVALENT

[consisting of ____ pages, including this title page]

[to be attached upon completion of the Fence Work and issuance of same by the BOARD]

DRAFT #7

EXHIBIT "C"
TO
JOINT USE AGREEMENT

DEPICTING THE FENCE WORK

[consisting of ____ pages, including this title page]

DRAFT