

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO MASTER LEASE AGREEMENT is made and entered into as of this ____ day of _____, 20____, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),
a political subdivision of the State of Florida,
having its principal place of business at
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF FORT LAUDERDALE, FLORIDA

(hereinafter referred to as "CITY")
a municipal corporation of the State of Florida
whose address is
100 North Andrews Avenue, Florida 33301

WHEREAS, SBBC and the City entered into a forty (40) year Master Lease Agreement on October 26, 1978 (hereafter "Agreement") to allow the City to lease and utilize the athletic field at Croissant Park Elementary (hereafter "School") for playground and recreational purposes and made available to residents of the City in the area; and

WHEREAS, the City utilizes the School athletic field to sponsor various community sports and summer camp programs; and

WHEREAS, the City desires to have access to the restrooms adjacent to the School's athletic field when the field is being used by the City and the City at its sole expense will install fencing around the restrooms to prevent access to the entire School site and the restrooms including the added fencing is hereafter referred to as "Leased Premises"; and

WHEREAS, SBBC and the City mutually desire to amend the Agreement to allow the City to utilize the restrooms adjacent to the athletic field and also to incorporate certain provisions into the Agreement; and

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 – SPECIAL CONDITIONS

2.01 **Leased Premises.** Exhibit A of the Master Lease Agreement is hereby amended to include the restrooms adjacent to the athletic field and shown on the sketch attached hereto as **Exhibit “A”** and made a part hereof.

2.02 **Improvements.** The location of any and all recreational improvements (hereafter referred to as “Improvements”) to be placed on the Leased Premises, shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any recreational facilities before they are placed on the Leased Premises. However, such approval by SBBC shall not be unreasonably withheld.

(a) The authority to grant this approval regarding this Agreement is hereby delegated by the SBBC to the SBBC’s Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that the City will prepare and submit plans to the SBBC’s Chief Facilities Officer and Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational facilities as applicable, and any other requirements imposed by applicable law. The SBBC’s Chief Facilities Officer and Chief Building Official shall have thirty (30) days from the date of receipt to review and comment on the plans. All design documents shall be approved by the SBBC’s Chief Facilities Officer and Chief Building Official prior to submission to the Department of Education, if applicable. The City agrees to obtain all necessary permits and approvals and to contract with a Contractor for the construction of the Improvements.

(b) The City shall be solely responsible for all contractual obligations to the contractor hired to construct the Improvements.

(c) The City shall ensure the contractor correct any defective or faulty work or materials that appear after the completion of the Improvements within the warranty period of such work performed.

(d) The City will be responsible for maintenance and repair of fence improvements placed on the Leased Premises.

(e) Any facilities placed on said Leased Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended, in writing, to reflect the use and responsibility of the Improvements.

2.03 **Consumables.** The City will provide consumables (toilet paper, paper towels, and hand soap, etc.) in the restrooms as needed on an ongoing basis and after each and every time it utilizes the restrooms, will restock the consumables.

2.04 **Maintenance.**

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

(1) The SBBC will clean and lock up the Leased Premises during the hours of operation stated in Section 2.06. SBBC will maintain and keep the Leased Premises clean, sanitary and free from trash and debris during the hours school is in session as set forth herein in Section 2.06 below. Upon failure of the SBBC to comply with the provisions of this section, City shall give written notice to the School Principal of such failure to comply, by email. If within a period of 24 hours of such email, the SBBC has not commenced to complete the cleaning of said Leased Premises, City shall have the right to enter upon the Leased Premises, remove trash and debris from the area and charge the SBBC the cost incurred by City for such services (based on SBBC's Policy 1341 fee schedule). Billing for trash and debris removal shall be on a per-cleaning basis and shall be due and payable within fifteen (15) days after receipt of said billing by the SBBC.

(2) The City will clean and lock up the Leased Premises during the hours of operation stated in Section 2.06. City will maintain and keep the Leased Premises clean, sanitary and free from trash and debris during City access times. The City will clean restrooms between the hours of 6pm and 6am, after each City event to insure Leased Premises is clean for School use. Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City's Director of Parks and Recreation, of such failure to comply, by email. If within a period of 24 hours of such email, the City has not commenced to complete the cleaning of said Leased Premises, SBBC shall have the right to enter upon the Leased Premises, to clean, remove trash and debris from the area and charge the City the cost incurred by SBBC for such services (based on SBBC's Policy 1341 fee schedule). Billing for trash and debris removal shall be on a per-cleaning basis and shall be due and payable within fifteen (15) days after receipt of said billing by the City.

(b) If the City fails to clean and restock consumables in the restrooms more than three times the SBBC may terminate this Amendment allowing the City use of the School's restrooms. The authority to terminate this agreement pursuant to this clause is delegated to the Superintendent of Schools ("Superintendent") or his designee by providing thirty (30) day written notice to the City terminating use of the restroom facilities as provided for in this Amendment.

(c) The upkeep and maintenance of the Leased Premises shall be borne by both the City and SBBC, and the City and SBBC agrees at all times to keep the area herein leased and the Improvement placed on said area properly maintained.

(d) Notwithstanding anything else in this Section 2.04 to the contrary, the SBBC and the City agree that both parties shall be liable and responsible for any and all maintenance, cleanup, damages and injuries that may arise during the time the Leased Premises is under their respective jurisdiction and/or during the time after the Leased Premises is under the SBBC or the City's jurisdiction if either party fails to lock the Leased Premises during their respective hours of operation.

2.05 **Rental of Leased Premises.** The City may not rent the Leased Premises for the use of a third party without obtaining the prior written consent of the Superintendent or his designee of the school upon which the Lease Premises are located.

2.06 **Hours of Operation.** The Leased Premises will be under the control of the SBBC during the hours School is in session and special School events. Control and use of the Leased Premises as depicted on the sketch (**Exhibit "A"**) will be under the jurisdiction of the City from 5:00 pm to 9:00 pm, Monday through Friday, and 8:00 am through 9:00 pm, Saturdays, Sundays, and SBBC approved holidays. If either party would like to utilize the Leased Premises during the other party's designated use time, the requesting party shall provide a minimum of fifteen (15) calendar days advance written notice to the other party. The written notice must specify the dates and times the Leased Premises is desired to be used. The timeframe required for advanced written notice, in this provision, may be revised by mutual agreement of the Superintendent of Schools or designee and the Director, Parks and Recreation or designee without a formal amendment of this Agreement.

2.07 **Security of Leased Premises.** The City will randomly check the Leased Premises when under the control and use by the City. If it is determined that any safety issues occurred during the time the Leased Premises was under the City's jurisdiction the City will be liable and indemnify the SBBC consistent with Sections 2.10, 2.12, and any other applicable provisions in this Agreement. The City will secure the Leased Premises when under City jurisdiction by locking the restrooms after hours of operation as stated herein in Section 2.06.

2.08 **Ownership of Improvement at Lease Expiration.** In the event this Agreement is not terminated by SBBC or the City prior to its expiration date, the City installed fence shall become the property of SBBC at the expiration of this Agreement.

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

2.10 **Required Insurance Coverages.** 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 state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

Each party shall maintain General Liability Insurance, with limits of liability not less than \$1,000,000 Each Occurrence \$2,000,000 General Aggregate. Each party shall procure and maintain at its own expense, and keep in effect during the full term of the Agreement, a policy or policies of insurance or self-insurance under a Risk Management Program in accordance with Florida Statutes, Section 768.28 for General and Automobile Liability.

2.10.1 Each party shall procure and maintain at its expense, and keep in effect during the full term of the Agreement, Self-insured worker's Compensation Insurance with Florida statutory benefits in accordance with Chapter 440, Florida Statutes including Employer's

Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

2.10.2 Automobile Liability Insurance: Each party shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in an amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage.

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

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

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

2.11 **Background Screening:** The City agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its 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 the City or its personnel providing any services under the conditions described in the previous sentence. The 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 the City and its personnel. The parties agree that the failure of the 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, each party agrees to indemnify and hold harmless the other party, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from its 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 the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

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

until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

ARTICLE 3 – GENERAL CONDITIONS

Additional Provisions. The parties hereby agree to the following additional provisions to the Agreement:

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, and contributions to unemployment compensation funds or insurance for the other party or the other party'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.

(a) It is specifically agreed between the parties hereto that at any time SBBC desires to cancel and/or terminate this entire Agreement or any designated portion of the Leased Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have the right to do so with or without cause. SBBC's determination to cancel this agreement shall be conclusively binding upon all parties. In the event SBBC so elects, the City shall be given ninety (90) days written notice prior thereto (unless SBBC is terminating due to City's failure to comply as stated in Section 2.04(b) where thirty (30) days written notice will be provided).

(b) Notwithstanding anything stated in 3.05 (a), the City's failure to lock the Leased Property may be grounds for immediate termination for cause of this First Amendment to Master Lease Agreement, without liability to SBBC. Termination of this First Amendment to Master Lease Agreement, will be communicated to the City's Director of Parks and Recreation by the Superintendent or his designee.

(c) The City shall likewise have the unqualified right of cancellation of this Agreement, in whole or as to any designated portion or area of the Leased Premises upon ninety (90) days written notice of cancellation to SBBC. The City shall properly exercise its option to cancel this Agreement, as to the whole or part of the Leased Premises.

(d) In the event this Agreement is canceled by either SBBC or the City, the City installed fence shall become the property of SBBC.

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 written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination pursuant to Section 3.05.

3.07 Public Records. The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. City shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, City shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. 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 Agreement's term and following completion of the Agreement if City does not transfer the public records to SBBC. Upon completion of the Agreement, City shall transfer, at no cost, to SBBC all public records in possession of City or keep and maintain public records required by SBBC to perform the services required under the Agreement. If City transfers all public records to SBBC upon completion of the Agreement, City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If City keeps and maintains public records upon completion of the Agreement, City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION 600 SE THIRD AVENUE, FORT LAUDERDALE, FL 33301.

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

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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 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.

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

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

3.16 **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.

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

3.18 **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.

3.19 **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.

3.20 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

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

- a) this First Amendment to Master Lease Agreement; and
- b) the Master Lease Agreement.

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

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

3.24 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

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

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

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: _____
Abby M. Freedman, Chair

ATTEST:

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:

Office of the General Counsel

FOR CITY

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

CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida

By _____
JOHN P. "JACK" SEILER, Mayor

(CORPORATE SEAL)

ATTEST:

JEFFREY A. MODARELLI, City Clerk

By _____
LEE R. FELDMAN, City Manager

Approved as to form:

COLE J. COPERTINO
Assistant City Attorney

