

LICENSE AGREEMENT

THIS LICENSE 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 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 COCONUT CREEK
(hereinafter referred to as "the City"),
whose principal place of business is
4800 West Copans Road, Coconut Creek, FL 33063

WHEREAS, SBBC owns certain real property located in Broward County, Florida as more specifically described herein; and

WHEREAS, The City is willing to expend certain funds for the equipping and improving of a portion of the school grounds; and

WHEREAS, The City is interested in conducting landscape improvements along the canal banks located on Coconut Creek High School property and the City intends to install irrigation, trees, and sod to beautify the canal bank green space area; and

WHEREAS, SBBC is desirous of permitting City to access, install irrigation and landscaping, and maintain canal bank green space area; and

WHEREAS, SBBC and the City believe that such an arrangement will be of mutual benefit to all parties and that cooperation between the parties hereto will result in great benefit to the residents of the City.

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 **Term of License Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall be for a period of twenty-five (25) years commencing on December 6, 2016 and expire on December 5, 2041.

2.02 **Licensed Premises.** SBBC does hereby grant a license to the City for a portion of land along the canal banks adjacent to Coconut Creek High School referred to herein as “Licensed Premises” and shown on the sketch or sketches attached hereto as **Exhibit “A”** and made a part hereof.

2.03 **Rental.** The rent payable by the City for the Licensed Premises shall be One Dollar (\$1.00) per year payable to SBBC on the yearly anniversary of this Agreement.

2.04 **Right of Entry.** For good and valuable consideration, the receipt of which is hereby acknowledged, SBBC hereby grants to the City, its employees, contractors and assigns, temporary, non-exclusive access, ingress and egress over, across and through said Licensed Premises for purposes deemed by the City to be necessary, convenient, or incident to, or in connection with beautifying the Licensed Premises, as depicted in **Exhibit “A”**.

(a) The Licensed Premises shall be under the control of the City’s Parks and Recreation Department and shall operate during their designated hours of operation posted on the Licensed Premises. SBBC in coordination with the City’s Parks and Recreation Department shall mutually agree on SBBC’s access to the Licensed Premises on an as needed basis.

(b) SBBC hereby acknowledges and agrees that the use of backhoes, bulldozers, cranes, other earth moving and related equipment and/or vehicles (collectively, the “Equipment”) may be necessary to accomplish the above described purpose of this License Agreement, and SBBC agrees that the right of entry granted herein includes the right of the City, its employees, contractors and assigns to bring the Equipment onto the Licensed Premises.

(c) The City admits and agrees that if any portion of the SBBC’s property or Licensed Premises is disturbed, damaged, or destroyed by City, at any time, the City shall, at its sole expense, restore the disturbed damaged, or destroyed portion of the SBBC’s property or Licensed Premises to its original condition to allow for SBBC use.

2.05 **Uses Permitted.** The uses and purposes to which the City shall put the Licensed Premises shall be for installation of irrigation, trees, and sod to beautify the canal bank green space area available to the City residents of the area, and as needed by the SBBC. The Licensed Premises is to be used strictly for the above stated purpose and no renting of Licensed Premises shall be permitted unless specifically approved by SBBC in writing.

2.06 **Conflict of Uses.** The uses of said Licensed Premises by the City shall be limited and restricted so as not to conflict in any way with the use of the Licensed Premises by SBBC in its public education program, and the use of said Licensed Premises by the City shall at all times be in compliance with the laws of the State of Florida concerning the use of school property. However, any damages to the

Licensed Premises related to the use of the Licensed Premises by SBBC shall be the responsibility of SBBC. In the event of any damages to the Licensed Premises by SBBC, SBBC agrees to return the Licensed Premises back to a condition equal to or better than the condition it was in prior to the damages. Any damages to the Licensed Premises related to the use of the Licensed Premises by the City shall be the responsibility of the City. In the event of any damages to the Licensed Premises by the City, the City agrees to return the Licensed Premises back to a condition equal to or better than the condition it was in prior to the damages.

2.07 **Improvements**. The location of any and all recreational improvements (hereafter referred to as “Improvements”) to be placed on the Licensed Premises, shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any facilities before they are placed on the Licensed Premises. However, such approval by SBBC shall not be unreasonably withheld. Any facilities placed on said Licensed Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ten (10) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended to reflect the use and responsibility of the Improvements.

(a) The 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 sixty (60) days from the date of receipt to review and comment. 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. SBBC may not reject any reasonable plans and the implementation of any suggested changes to the plans requested by SBBC that will result in increased cost to the City, unless required by Federal, State and/or local codes and regulations, are at the sole discretion of the City. The City agrees to obtain all necessary permits and approvals and to either construct such improvements utilizing its own qualified staff or contract with an appropriately licensed 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) Before the commencement of the Improvements, the City shall require the engaged contractor to furnish a surety payment and performance bonds that guarantees the completion of the Improvements and the performance of the work necessary to complete the Improvements; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the project. The contractor shall be required by contract to deliver a copy of the surety bond to the City. Such bonds shall remain in effect for one (1) year after completion of the Improvements. The contractor will cause the correction of 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 agrees that it will apply for all of the necessary permits within ninety (90) days of SBBC approval of plans. The City will commence construction of the Improvements within ninety

(90) days of issuance of a Notice to Proceed (NTP) to a contractor and will complete construction of the Improvements within nine (9) months after the contractor has mobilized.

(e) The City agrees to pay for the installation of separate meters, and utility costs for all utility services provided to constructed Improvements.

(f) The City within thirty (30) days of improvement completion will provide SBBC with a copy of actual itemized costs of entire improvements. If improvements are completed in phases, the City will provide actual itemized costs within thirty (30) days of each completed phase.

2.08 **Maintenance.**

(a) It shall be the responsibility of the City to keep the Licensed Premises clean, sanitary and free from trash and debris, and the Licensed Premises shall be mowed to prevent unsightly accumulation of weeds and other vegetation. Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City of such failure to comply, by Certified Mail, Return Receipt Requested. If, after a period of ten (10) days of such mailing, the City has not commenced to complete the cleaning and/or mowing of said recreational area, SBBC shall have the right to enter upon the Licensed Premises, remove trash and debris from the area, or mow the area and charge the City the cost incurred by SBBC for such services. Billing for trash and debris removal or mowing shall be on a per-cleaning or per-mowing basis and shall be due and payable within fifteen (15) days after receipt of said billing by the City.

(b) Notwithstanding any of the provisions of the foregoing subsection, the parties further agree that the City, in addition to the above, will clean up the Licensed Premises after each and every event it sponsors, and SBBC will be responsible to clean after each and every event it sponsors.

(c) The upkeep and maintenance of the Licensed Premises shall be borne by the City, and the City agrees at all times to keep the areas herein licensed and the equipment placed on said areas properly maintained.

(d) The City shall not be responsible for stormwater related maintenance of the lake including but not limited to aquatic vegetation control and sedimentation and erosion control. The lake banks adjacent to the school fence line are currently severely eroded and any future lake bank stabilization and/or reconstruction that may be necessary shall remain the responsibility of SBBC.

2.09 **Ownership of Improvement at License Expiration.** In the event this Agreement is not canceled by SBBC or the City prior to its expiration date, all permanent improvements to include landscaping (such as trees, hedges and shrubs) located on the Licensed Premises shall become the property of SBBC at the expiration of this Agreement. However, the City shall have the right to remove all moveable (non-permanent) facilities at the expiration, cancellation or termination of this Agreement.

2.10 **Inspection of the City's Records by SBBC.** The City shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All the City's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination,

evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by the City or any of the City's payees pursuant to this Agreement. The City's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. The City's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) The City's Records Defined. For the purposes of this Agreement, the term "the City's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to the City's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to the City pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide the City reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the City's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by the City to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any the City's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by the City in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the City. If the audit discloses billings or charges to which the City is not contractually entitled, the City shall pay said sum to SBBC within twenty (20) days of receipt of written demand otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. The City shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by the City to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to the City pursuant to this Agreement and such excluded costs shall become the liability of the City.

(h) Inspector General Audits. The City shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.11 Insurance. Upon execution of this License Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or self-insurance evidencing the required coverage.

2.12 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.

2.12.1 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).

2.12.2 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.

2.12.3 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.

2.12.4 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.

2.12.5 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.

2.13 **Hazardous Materials.** The City shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Licensed Premises by the City, its agents, principals, employees, contractors, consultants or invitees without the prior written consent of the SBBC's Chief Facilities Officer and Chief Building Official, which consent may be withheld for any reason whatsoever or for no reason at all. If the City breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material upon the Licensed Premises the City caused or permitted by the City (or the aforesaid others) results in (a) any contamination of the Licensed Premises, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, or if contamination of the Licensed Premises or the surrounding area(s) by Hazardous Material otherwise occurs for which the City is legally, actually or factually liable or responsible to SBBC (or any party claiming, by through or under SBBC) for damages, losses, costs or expenses resulting therefrom, then the City shall be solely responsible for all costs, expenses and amounts required to remediate, clean up and correct such matter. The City shall further fully and completely indemnify, defend and hold harmless SBBC (or any party claiming by, through or under SBBC) from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses [including, without limitation: (i) diminution in the value of the Licensed Premises and/or the land on which the Licensed Premises are located and/or any adjoining area(s) which SBBC owns or in which it holds a property interest; (ii) damages for the loss or restriction on use of rentable or usable space of any amenity of the Licensed Premises or the land on which the Licensed Premises are located; (iii) damages arising from any adverse impact on marketing of space; and (iv) any sums paid in settlement of claims, reasonable attorneys and paralegals' fees, (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings) consultants fees and expert fees, which arise during or after the term of this License Agreement or any renewal thereof, as a consequence of such contamination. This indemnification of SBBC by the City includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Licensed Premises.

2.13.1 Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Licensed Premises or the surrounding area(s) caused or permitted by the City (or the aforesaid others) results in (a) any contamination of the Licensed Premises, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, then the City shall immediately notify SBBC of any contamination, claim of contamination, loss or damage and, after consultation and approval by SBBC, take all actions at the City's sole expense as are necessary or appropriate to return the Licensed Premises, the surrounding area(s) and the soil or surface or ground water to the condition existing prior to the introduction of any such Hazardous Material thereto, such that the contaminated areas are brought into full compliance with all applicable statutory regulations and standards. The foregoing obligations and responsibilities of the City shall survive the expiration or earlier termination of this License Agreement.

2.13.2 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the

Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. "Hazardous Material" includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal governmental law. "Hazardous substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's"), petroleum, any and all material or substances which are classified as "biohazardous" or "biological waste" (as such terms are defined by Florida Administrative Code ("F.A.C.") Chapter 17-712, as amended from time to time), and extremely "hazardous waste" or "hazardous substance" pursuant to federal, state or local governmental law.

2.13.3 SBBC and its agents shall have the right, but not the duty, to inspect the Licensed Premises at any time to determine whether the City is complying with the terms of this License Agreement. If the City is not in compliance with this License Agreement, SBBC shall have the right to immediately enter upon the Licensed Premises to remedy at the City's expense any contamination caused by the City's failure to comply, notwithstanding any other provision of this License Agreement. SBBC shall use its best efforts to minimize interference with the City's operations, but shall not be liable for any interference caused thereby.

2.13.4 Any non-compliance by the City with its duties, responsibilities and obligations under this Section shall constitute a default of this License Agreement, no notice of any nature from SBBC to the City being required.

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

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

With a Copy to: Director, Facility Planning & Real Estate Department
School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To the City: City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

With a Copy to: City Attorney

City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

2.15 **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, the 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 from the 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 the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.16 **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. 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.

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 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 Licensed Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have conclusive right to do so with or without cause. SBBC's determination to cancel this license 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 and in the event of cancellation, SBBC shall reimburse the City for the then remaining value of the City-installed Improvements (except sod, landscaping (such as trees, hedges and shrubs) amortized for remaining term. In the event the parties hereto cannot mutually agree on said value, same shall be appraised by three (3) appraisers; one selected by SBBC; one selected by the City; and the third appraiser selected by the two appraisers appointed.

(b) In the event of such appraisal of the value, the average of the three (3) appraisers shall be the amount SBBC shall pay. It is further agreed that SBBC shall be obligated to pay the fee of the appraiser selected by SBBC; the City shall be obligated to pay the fee of the appraiser selected by the City; the City and SBBC shall each pay fifty percent (50%) of the fee of the appraiser selected by the two aforementioned appraisers.

(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 Licensed Premises upon ninety (90) days' written notice of cancellation to SBBC. If the City shall properly exercise its option to cancel this Agreement, as to the whole or part of the Licensed Premises, the City shall have the right, subject to SBBC's purchase option described below, to remove, at its sole expense, any and all such fixtures and Improvements to the Licensed Premises as the City had placed thereupon, except that the City shall not remove sod, landscaping (such as trees, hedges and shrubs), sand or earth placed upon the Licensed Premises (except as incidental to removal of other fixtures and/or improvements) and the City shall, in the case of removal of fixtures and Improvements, reestablish the normal grade of the Licensed Premises to the condition which the same was found upon the Cities first entering the Licensed Premises hereunder. If, upon cancellation by the

City; SBBC wishes to purchase the City-installed Improvements, then the City shall sell the same to SBBC at a mutually agreed price. However, if the City and SBBC cannot mutually agree upon such a price (the value of the property to be purchased) then the appraisal method, above-described in Section 3.05(b) hereof, shall be used to arrive at a binding price.

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) day 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 and/or City under this Agreement shall be contingent upon an annual budgetary appropriation by its governing bodies. If SBBC and/or City does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC and/or City at the end of the period for which funds have been allocated. SBBC and/or City 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 except as otherwise specified in Section 3.05(a).

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.

3.09 **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 transfer 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.

3.10 **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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

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 exclusively 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” attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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 affect 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 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

3.26 **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.

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By: _____
Dr. Rosalind Osgood, Chair

Superintendent of Schools

Approved as to form and legal content:

Office of the General Counsel

FOR THE CITY

ATTEST:

CITY OF COCONUT CREEK, FLORIDA

Leslie Wallace May, City Clerk

By: _____
Mary C. Blasi, City Manager

Approved as to Form:

Terrill C. Pyburn, City Attorney

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ of _____, on behalf of the agency.
(Name of Person) (Name of Corporation or Agency)

He/She is personally known to me or produced _____ as identification and did/did not first take an oath. (Type of Identification)

My Commission Expires: _____

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary’s Commission No.