

**AGREEMENT BETWEEN
THE CITY OF COCONUT CREEK,
NORTH BROWARD PREPARATORY SCHOOLS, LLC, AND BMOC-MIA (FL), LLC
TO PROVIDE FOR PHASING OF EXOTIC VEGETATION REMOVAL AND
INSTALLATION OF ENHANCED SUPPLEMENTAL LANDSCAPING**

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the **CITY OF COCONUT CREEK**, a Florida municipal corporation (hereinafter referred to as "City") AND **NORTH BROWARD PREPARATORY SCHOOLS, LLC**, a foreign limited liability company; **BMOC-MIA (FL), LLC**; a foreign limited liability company (collectively hereinafter referred to as "School").

WITNESSETH:

WHEREAS, School owns property located at 7600 Lyons Road, Coconut Creek, FL 33073 ("School Site") (Exhibit "A") and School operates a K-12 International Preparatory School on the property; and

WHEREAS, School has obtained specific permits for landscape and irrigation under permit #17001904 and for clearing and grubbing under permit #17001649 (collectively referred to herein as "permits") that includes an associated approved landscape plan ("landscape plan") (Exhibit "B"); and

WHEREAS, the School began construction under the permits on June 5, 2017 in accordance with Building Permit No. 17001142; and

WHEREAS, as part of the construction under the permits, and in compliance with the approved landscape plan and in accordance with Section 13-444(b)(2)5 of the City's Code of Ordinances, the School removed exotic vegetation in the northeast corner of the School Site and planted new vegetation in its place; and

WHEREAS, the abutting property owner adjacent to the northeast corner of the School Site located at 77 41 NW 39 Avenue, Coconut Creek, FL ("neighbor") expressed concern to the City with the removal of the exotic vegetation; and

WHEREAS, concurrent to the City's receipt of neighbor's complaint, the City received complaints about the removal of exotic vegetation in two (2) other locations in the City (Windmill Park and Johnson Road); and

WHEREAS, as a result of the collective complaints of City residents in three (3) locations throughout the City, the City Manager directed that no exotic vegetation be

removed from any property in the City without a plan that assures buffering of residential properties until further notice; and

WHEREAS, the City Manager's direction left the School's clearing and grubbing and landscaping activities in limbo; and

WHEREAS, the City desires to reduce to writing the School's remaining obligations under its open permits as it relates to the completion of the clearing and grubbing and landscaping under this new City direction; and

WHEREAS, this Agreement shall supersede the School's clearing and grubbing permit #17001649.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable considerations, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1: GENERAL

Section 1.01 The foregoing recitals are true and correct and are incorporated herein as if fully set forth.

Section 1.02 The purpose of this Agreement is to provide clarity regarding the School's removal of exotic vegetation from the School Site based on new policy direction from the City Manager.

Section 1.03 School agrees to provide notice of this Agreement to all property owners abutting directly to the east of the School Site at least ten (10) days prior to this Agreement being heard by the City Commission with a copy to City.

ARTICLE 2: SCHEDULE/ PHASING FOR LANDSCAPE WORK

Section 2.01 School shall be responsible for the removal and installation of all vegetation at the School Site in accordance with the enhanced supplemental landscape plan ("supplemental plan") (Exhibit "C"). School shall perform all landscape work in accordance with all applicable federal, state and local laws, rules and regulations.

Section 2.02 School shall be responsible for notifying all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of each phase of landscape work on the School Site with a copy to City.

Section 2.03 The schedule for completion of the landscape work at the School Site shall be as follows:

Landscape Work:

Phase 1 improvements include:

Most of the landscape work for Phase 1 was completed in accordance with the approved landscape plan (Exhibit "B") and prior to this Agreement, however, the following landscape work items are still remaining and shall be completed in accordance with the supplemental landscape plan (Exhibit "C"):

1. Notification of all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of work on Phase 1 with a copy to the City.
2. Install 135 Hamella patens (Fire Bush) 24" in height, 24" spread and 24" on center along the eastern boundary of the School Site for entire length of Phase 1 as provided in the supplemental landscape plan (Exhibit "C").

Schedule: The Phase 1 improvements listed above shall be completed by December 31, 2018.

Phase 2 improvements include:

1. Notification of all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of work on Phase 2 with a copy to the City.
2. Remove all exotic vegetation along the entire length of Phase 2 in accordance with the approved landscape plan (Exhibit "B") and as provided in the supplemental landscape plan (Exhibit "C").
3. Install 47 Hamella patens (Fire Bush) 24" in height, 24" spread and 24" on center along the eastern boundary of the School Site for the entire length of Phase 2 in accordance with the approved landscape plan (Exhibit "B") and the supplemental landscape plan (Exhibit "C").

Schedule: The Phase 2 improvements listed above shall be completed by December 31, 2019.

Phase 3 improvements include:

1. Notification of all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of work on Phase 3 with a copy to the City.

2. Remove all exotic vegetation along the entire length of Phase 3 in accordance with the approved landscape plan (Exhibit "B") and as provided in the supplemental landscape plan (Exhibit "C").

3. Install 93 Hamella patens (Fire Bush) 24" in height, 24" spread and 24" on center along the eastern boundary of the School Site for the entire length of Phase 3 in accordance with the approved landscape plan (Exhibit "B") and the supplemental landscape plan (Exhibit "C").

Schedule: The Phase 3 improvements listed above shall be completed by December 31, 2020.

Phase 4 improvements include:

1. Notification of all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of work on Phase 4 with a copy to the City.

2. Remove all exotic vegetation along the entire length of Phase 4 in accordance with the approved landscape plan (Exhibit "B") and as provided in the supplemental landscape plan (Exhibit "C").

3. Install 93 Hamella patens (Fire Bush) 24" in height, 24" spread and 24" on center along the eastern boundary of the School Site for the entire length of Phase 4 in accordance with the approved landscape plan (Exhibit "B") and the supplemental landscape plan (Exhibit "C").

Schedule: The Phase 4 improvements listed above shall be completed by December 31, 2021.

Phase 5 improvements include:

1. Notification of all property owners abutting directly to the east of the School Site at least thirty (30) days prior to the start of work on Phase 5 with a copy to the City.

2. Remove all exotic vegetation along the entire length of Phase 5 in accordance with the approved landscape plan (Exhibit "B") and install 82 Hamella patens (Fire Bush) 24" in height, 24" spread and 24" on center along the eastern boundary of the School Site for the entire length of Phase 5 in accordance with the as provided in the supplemental landscape plan (Exhibit "C").

Schedule: The Phase 5 improvements listed above shall be completed by December 31, 2023.

ARTICLE 3: TERM

This Agreement shall become effective upon approval of both parties, and shall continue for six (6) years or until six (6) months after all phases as referenced in Article 2 above are completed. Nothing herein shall prevent the School from completing one or more of the phases earlier than the timeframes established in Article 2 above upon advanced notice to the City and in compliance with the notice requirements contained herein.

ARTICLE 4: NOTICES

Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by certified mail, return receipt requested. All notices shall be addressed to the following:

As to School: North Broward Preparatory Schools, LLC
Attention:
John K. Lehman, Managing Director
7600 Lyons Road
Coconut Creek, FL 33073

BMOC-MIA (FL), LLC
Attention:
C/O W.P. Carey Inc.
50 Rockefeller Plaza
2nd Floor
New York, NY 10020

With copies to: Dunay Miskel and Backman, LLP
Attention: Scott Backman, Esq.
14 S.E. 4th Street, Suite 36
Boca Raton, FL 33432

As to City: City of Coconut Creek
Attention: City Manager
4800 West Copans Rd.
Coconut Creek, FL 33063

With copies to: City of Coconut Creek
Attention: City Attorney
4800 West Copans Rd.
Coconut Creek, FL 33063

ARTICLE 5: OWNERSHIP OF LANDSCAPE WORK

Section 5.01 At all times material to this Agreement, the landscape work shall be and shall remain in School's ownership.

Section 5.02 The upkeep and maintenance costs of the landscape work shall be borne by the School and the School agrees at all times to keep the areas referenced in the approved landscape plan (Exhibit "B") and the supplemental landscape plan (Exhibit "C") properly maintained.

ARTICLE 6: RIGHT TO INSPECT

Section 6.01 City's agent or authorized representative shall have access to the School Site, within normal school operating hours, to inspect landscape work in order to ensure compliance has been achieved at each and every phase as referenced in Article 2 from the effective date of this Agreement for the duration of the term of this Agreement. City shall use its best efforts to minimize interference with the School's operations, but shall not be liable for any interference caused thereby.

Section 6.02 Failure by the School to permit inspection by City as permitted under this Article shall constitute a default of this Agreement.

ARTICLE 7: DEFAULT

The parties agree that, in the event that the School is in default of its obligations under this Agreement, the City shall provide to the School thirty (30) days written notice to cure the default.

ARTICLE 8: REMEDIES/ VENUE

Section 8.01 In the event said default is not cured within thirty (30) days, the City may pursue any right, power, or remedy at law or in equity or by statute or otherwise including but not limited to Section 166.0415, Fla. Stat., as may be amended, and Chapter 162, Fla. Stat., as may be amended. No remedy herein conferred upon any party is 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 given hereunder or 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 further exercise thereof. The parties hereto may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

Section 8.02 This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held exclusively in Broward County.

ARTICLE 9: ENTIRETY OF AGREEMENT

This Agreement represents the entire understanding between the City and School as to the phasing of exotic vegetation removal and installation of new enhanced supplemental landscaping at the School Site and supersedes the clearing and grubbing permit #17001649 and any and all other negotiations, representations or agreements, either written or oral, pertaining to the landscape work at the School Site. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other agreements other than those pertaining to landscape work at the School Site shall remain in full force and effect and shall not be superseded by this Agreement.

ARTICLE 10: SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 11: FILING

A copy of this agreement shall be filed with the Clerk of the Circuit Court in and for Broward County.

ARTICLE 12: CAPTIONS

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

ARTICLE 13: 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.

ARTICLE 14: BINDING EFFECT

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

ARTICLE 15: ASSIGNMENT

Neither this Agreement, nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

ARTICLE 16: NO THIRD PARTY BENEFICIARIES

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

ARTICLE 17: 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.

ARTICLE 18: 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.

ARTICLE 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.

ARTICLE 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.

ARTICLE 21: 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.

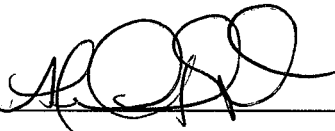
ARTICLE 22: EFFECTIVE DATE


The effective date of this Agreement shall be as of the date it has been executed by both parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

NORTH BROWARD PREPARATORY
SCHOOLS, LLC

By:  _____

By:  _____

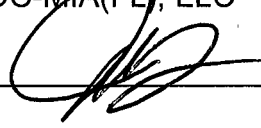
Date: 6/28/18

ATTEST:

By: 

Date: 6/28/18

BMOC-MIA(FL), LLC

By: 

ATTEST:

CITY OF COCONUT CREEK

Leslie Wallace May, City Clerk

By: _____
Mary C. Blasi, City Manager

Approved as to Form:

Terrill C. Pyburn, City Attorney

Date: _____

Exhibit "A"

[School Site]

Parcel 'A', Tract B-1 and Tract B-2, NORTH BROWARD SCHOOL REPLAT, according to the Plat thereof as recorded in Plat Book 183, Page 103, of the Public Records of Broward County, Florida.

LESS the following described land:

A portion of Section 31 & 31, Township 47 South, Range 42 East, also being a portion of PALM BEACH FARMS Co PLAT No. 3, as recorded in Plat Book 2, Page 45-54, according to the Public Records of Palm Beach County, Florida, being more particularly described as follows:

COMMENCE at the northwest corner of Parcel 'A', NORTH BROWARD SCHOOL PLAT, according to the Plat thereof as recorded in Plat Book 163, Page 19, of the Public Records of Broward County, Florida; thence S89°33'27"E, along the south right-of-way line of the Hillsboro Canal, 322.52 feet; thence S00°56'38"E, 210.37 feet to the POINT OF BEGINNING; thence continue S00°56'38"E, 15.00 feet; thence S89°34'58"W, 275.94 feet; thence N00°25'02"W, along the east right-of-way line of Lyons Road, 15.00 feet; thence N89°34'58"E, a distance of 275.81 feet to the POINT OF BEGINNING.

Said lands lying in the City of Coconut Creek, Broward County, Florida, containing 2,637,718 square feet (60.5537 acres) more or less.

Exhibit "B"

Landscape Plan

Exhibit "C"

Supplemental Plan