

RECREATION LICENSE AGREEMENT

THIS RECREATION 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 POMPANO BEACH, FLORIDA
(hereinafter referred to as "City"),
whose principal place of business is
100 West Atlantic Boulevard, Pompano Beach, Florida 33060

WHEREAS, SBBC, as the controlling body of the district schools of Broward County, Florida owns, operates and maintains various facilities and sites throughout the county, including elementary, middle and high schools, vocational sites, training facilities and equipment, and lands/sites in the City of Pompano Beach suitable for use by City in its municipal programs; and

WHEREAS, partnerships instill a sense of civic pride and responsibility in students that will last far beyond their educational experience; and

WHEREAS, municipalities and the SBBC may share resources to support each other's goals and objectives; and

WHEREAS, SBBC and the City believe that such an arrangement will be of mutual benefit to all parties and will fill a great need in that area of the community and that cooperation between the parties hereto will result in great benefit to the residents of the City; and

WHEREAS, it is the purpose and policy of the City to develop, operate and maintain parks and community recreational facilities; and

WHEREAS, SBBC and the City desire to enter into this Recreation License Agreement (hereafter "Agreement") for the purposes of allowing the City to make improvements on and utilize portions of land (Site No. 322.2 a/k/a Cross Creek School) owned by the SBBC for recreational purposes.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein 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 Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of both parties and conclude on November 01, 2043, with an additional twenty-five (25) year renewal option if approved by the Board prior to expiration of this Agreement.

2.02 **Licensed Premises.** SBBC does hereby license to the City an area or areas referred to herein as “Licensed Premises” and shown on the sketch attached hereto as **Exhibit A** and made a part hereof.

2.03 **City Licensed Premises.** City does hereby license to the SBBC an area or areas, including any future improvements thereon, referred to herein as “City Licensed Premises” and as shown on the sketch attached hereto as **Exhibit A** and **Exhibit B** and made a part hereof. (**Exhibit B** shows components of proposed improvements on the City Licensed Premises that the City will be placing on the Licensed Premises at the City’s sole expense and additional park improvements that the City will be placing on City Licensed Premises at City’s sole expense.)

2.04 **Uses Permitted.** The uses and purposes to which the City shall put the Licensed Premises shall be for recreational purposes available to the City residents of the area, and as needed by the SBBC. The Licensed Premises are to be used strictly for recreational purposes and no advertising or food concessions, nor the licensing, leasing, or renting of same, shall be permitted by the City unless prior written consent of the SBBC Superintendent or designee is obtained.

2.05 **Parking.** The City residents shall use the open access parking lot(s) located on the School site to park vehicles while using Licensed Premises. For the purposes of this Agreement a vehicle shall be defined as a car, pick-up truck, SUV and/or motorcycle.

2.06 **Conflict of Uses.** The use 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.

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 Improvements before they are erected upon the Licensed Premises. However, such approval by SBBC shall not be unreasonably withheld. Any Improvements placed on said Licensed Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) calendar 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. Improvements must include security fence and necessary gates to separate the school campus from the Licensed Premises with key / access code provided to both parties.

(a) The authority to grant this approval regarding the Improvements and the security fencing / gates in 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 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 (SREF) as applicable, and any other requirements imposed by applicable law. The SBBC's Chief Facilities Officer and Chief Building Official shall have ninety (90) 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 Florida Department of Education, if applicable. City agrees to obtain all necessary permits, inspections, and approvals resulting in obtaining a Certificate of Occupancy from the School District. City also agrees to contract with a contractor for the construction of the Improvements, security fencing, and gates.

(b) Before the commencement of the Improvements, City shall require the engaged contractor to furnish surety payment and performance bonds that guarantee the completion of the Improvements and the performance of the work necessary to complete the Improvements, security fencing, and gates; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the Improvements, security fencing, and gates. City shall ensure that the contractor shall be required by contract to deliver a copy of the surety bond to City. Such bonds shall remain in effect for one (1) year after completion of the Improvements. City shall ensure that the contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements, security fencing, and gates within the warranty period of such work performed.

(c) City shall be solely responsible for all contractual obligations to the contractor engaged to construct the Improvements.

2.08 Maintenance.

(a) It shall be the responsibility of the City to maintain and keep the Licensed Premises clean, sanitary and free from trash and debris. Additionally, the City shall mow the Licensed Premises 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 Licensed Premises, SBBC shall have the right to enter upon the Licensed Premises, remove trash and debris from the area, or mow the area and the City shall pay for such costs within fifteen (15) days after receipt of said billing by SBBC. Billing for trash and debris removal or mowing shall be on a per-cleaning or per-mowing basis and shall be due and paid by the City within fifteen (15) days after receipt of said billing.

(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 up the Licensed Premises after each and every event it sponsors, including SBBC's use of the park improvement areas. In the event that SBBC fails to maintain and clean the premises during SBBC's use of the Licensed Premises, then City shall have the right to clean the premises and charge SBBC for all cleanup costs and SBBC shall pay for such costs within fifteen (15) days after receipt of said billing by the City.

(c) The upkeep and maintenance of all Licensed Premises shall be borne by the City, and the City agrees at all times to keep the areas herein licensed and the Improvements placed on said areas properly maintained, except as set forth in (b) above.

(d) Notwithstanding anything else in this Section 2.08 to the contrary, the SBBC and the City agree that both parties shall be liable and responsible for any and all cleanup, damages and injuries that may arise during the time the Licensed Premises is under their respective control.

2.09 **License, Lease, or Rental of Licensed Premises.** The City may not license, lease or rent the Licensed Premises for the use of a third party without obtaining the prior written consent of the SBBC Superintendent or designee.

2.10 **Hours of Operation.**

(a) **Licensed Premises.** The Licensed Premises, as shown in **Exhibit A**, and the proposed improvements that the City will be placing on the Licensed Premises will be exclusively under the control of the SBBC during the hours school is in session. The Licensed Premises will be under the control of the City during off-school hours from 4:00 pm until dusk during the school year, from 2:00 pm to dusk during the district scheduled Summer months, and from dawn until dusk on weekends and SBBC Holidays. If SBBC desires to utilize the Licensed Premises and improvements thereon when the Licensed Premises is under the control of the City, the School Principal or designee will complete the Notice of Facility Use Form, as shown in **Exhibit C** and submit it to the City's Parks and Recreation Director or designee for approval no less than fifteen (15) days before requested use. Also, if the City desires to utilize the Licensed Premises and improvements thereon when the Licensed Premises is under the control of SBBC, the City's Director of Parks and Recreation or designee will complete the Notice of Facility Use Form, as shown in **Exhibit C** and submit it to the School Principal or designee for approval no less than fifteen (15) days before requested use. Prior to the time the City is allowed to utilize the Licensed Premises under the **Exhibit C** form, the chain-link fence between the School and the Licensed Premises shall be locked. Also, the City will properly secure the Licensed Premises each day between dusk and dawn.

(b) **City Licensed Premises.** The City Licensed Premises, as shown in **Exhibit A** and proposed improvements that the City will be placing on the City Licensed Premises as shown in **Exhibit B**, will be under the control of the City. However, SBBC will have non-exclusive access to and utilization of the City Licensed Premises and improvements thereon during the hours school is in session. However, if SBBC desires to have control and access to utilize the City Licensed Premises and improvements thereon during the hours school is in session and during off-school hours as stated herein, the School Principal or designee will complete the Notice of Facility Use Form, as shown in **Exhibit C** and submit it to the City's Parks and Recreation Director or designee for approval no less than fifteen (15) days before requested use.

2.11 **Ownership of Improvements at License Expiration.** In the event this Agreement is not terminated and/or canceled by SBBC or the City prior to its expiration date, all permanent Improvements 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) Improvements at the expiration, cancellation or termination of this Agreement.

2.12 **Inspection of City's Records by SBBC.** City shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of 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 agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to City's Records from the effective date of this Agreement, for the duration of the term of the 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 City pursuant to this Agreement. SBBC's agent or its authorized representative shall provide City with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the City's facilities and to any and all records related to the Agreement and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. 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.

2.13 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
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To City: City Manager
City of Pompano Beach, Florida
100 West Atlantic Boulevard,
Pompano Beach, Florida 33060

With a Copy to: Recreation Programs Administrator, Parks and Recreation
City of Pompano Beach, Florida
100 West Atlantic Boulevard,
Pompano Beach, Florida 33060

2.14 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 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.

2.15 **Public Records**. Any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

2.16 **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.

2.17 **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.

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

2.19 **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 insured or self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary wavier limits that may change and be set forth by the legislature.

(a) 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 Liability.

(b) Each party shall procure and maintain at its expense and keep in effect during the full term of the Agreement, insured or 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).

(c) 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.

(d) 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.

(e) 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.

(f) 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.

2.20 **Environmentally Hazardous Material.** The City hereby acknowledges that SBBC prohibits at any time the storage of Environmentally Hazardous materials on SBBC's property. The City agrees not to store any Environmentally Hazardous materials on SBBC's property and understands that violation of this stipulation will result in SBBC's immediate termination of this Agreement and the City shall restore and return the property to the same condition that it was in on the date hereof, less any improvements.

2.21 **Security of All Licensed Premises.** The City will secure separation from the School campus, by locking campus gates before entering Licensed Premises. The City is solely responsible for any security necessary for any events and/or activities that the City permits upon the Licensed Premises when under the control of the City. If it is determined that any safety issues occurred during the time the Licensed Premises was under the City's control, the City will be liable for same issues. The City will secure all Licensed

Premises when under City control by locking the Licensed Premises after hours of operation as stated herein in Section 2.10.

2.22 **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.

2.23 **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.

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

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 Agreement.

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 nor 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 **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.

3.05 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 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 and in the event of cancellation, SBBC shall reimburse the City for the then remaining value of the City-installed Improvements 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; and 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 any and all such Improvements to the property as the City had placed thereupon, except that the City shall not remove sod, landscaping, 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 Improvements, reestablish the normal grade of the Licensed Premises to the condition which the same was found upon the City's 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 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.

3.07 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.

3.08 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 or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **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.

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

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **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.

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

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By: _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number