

MASTER RECREATION LEASE AGREEMENT

THIS MASTER RECREATION LEASE AGREEMENT is made and entered into as of this 5th day of August, 2014, 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 HOLLYWOOD, FLORIDA

(hereinafter referred to as "the City"),
whose principal place of business is
2600 Hollywood Boulevard, Hollywood, Florida 33022

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 Hollywood 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 entered into a Master Lease Agreement (MLA) on September 19, 1974 for the purposes of allowing the City to improve and utilize land (Site No. 156) owned by the SBBC; and

WHEREAS, upon entering into the Agreement, the City over the years developed the land into a park facility (AKA Washington Park) with playgrounds and other park and recreational facilities for use by its residents and as needed by the SBBC; and

WHEREAS, the MLA is set to expire on September 19, 2014, and the SBBC and the City desire to enter into a new MLA for another forty (40) year term; and

WHEREAS, the City is willing to as necessary, continue to expend funds to equip and improve the park; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Lease Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on September 20, 2014 and conclude on September 20, 2054.

2.02 **Leased Premises.** SBBC does hereby lease to the City an area or areas referred to herein as “Leased 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 Leased Premises shall be One Dollar (\$1.00) per year payable to SBBC on the yearly anniversary of this Agreement.

2.04 **Uses Permitted.** The uses and purposes to which the City shall put the Leased Premises shall be for playground and recreational purposes available to the citizens of the area, and as needed by the SBBC. The Leased Premises are to be used strictly for recreational purposes and no advertising or food concessions, or the renting of same, shall be permitted unless specifically approved by SBBC in writing.

2.05 **Conflict of Uses.** The uses of said Leased Premises by the City shall be limited and restricted so as not to conflict in any way with the use of the Leased Premises by SBBC in its public education program, and the use of said Leased 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.

2.06 **Improvements.** The location of any and all recreational improvements (hereafter referred to as “Improvements”) to be placed on the Leased Premises, including but not limited to baseball diamonds, buildings, lights, etc., shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any recreational facilities before they are placed on the Leased Premises. However, such approval by SBBC shall not be unreasonably withheld. Any facilities placed on said Leased Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended to reflect the use and responsibility of the Improvements.

(a) 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 and Construction Officer and Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, the State Requirements for Educational facilities as applicable and to the extent that the School Board is held to these requirements, the SBBC's Design Criteria, the SBBC's Design and Material Standards, and any other requirements imposed by applicable law. The SBBC's Chief Facilities and Construction Officer and 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 and Construction Officer and Building Official prior to submission to the Department of Education, if applicable. The City agrees to obtain all necessary permits and approvals and to contract with a Contractor for the construction of the Improvements.

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

(c) 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 Lessee. 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.

2.07 **Maintenance.**

(a) It shall be the responsibility of the City to maintain and keep the Leased Premises clean, sanitary and free from trash and debris, and the Leased 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 Leased 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 Leased Premises after each and every event it sponsors, and SBBC will be responsible to clean after each and every event it sponsors. In the event that SBBC fails to maintain and clean the premises during SBBC's use of the Leased 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 Leased Premises shall be borne by the City, and the City agrees at all times to keep the areas herein leased and the equipment placed on said areas properly maintained, except as set forth in (b) above..

2.08 **Hours of Operation.** SBBC and the City acknowledge that the Leased Premises currently functions as a park facility (Washington Park) for the City and is open from 7:00 a.m. to 10:00 p.m. seven (7) days a week and is available to the residents of the City. However, the SBBC and the City agree that at the times when SBBC is utilizing any portion of the Leased Premises, the entire area utilized by SBBC shall be under the SBBC's control during the duration of its use of the area and SBBC shall be liable and responsible for any and all maintenance, cleanup, damages and injuries that may arise during SBBC's use of said Leased Premises..

2.09 **Ownership of Improvement at Lease Expiration.** In the event this Agreement is not canceled by SBBC or the City prior to its expiration date, all permanent recreational facilities such as baseball diamonds, lighting facilities, permanent backstops, etc., shall become the property of SBBC at the expiration of this Agreement and SBBC shall pay the City the value of the recreational facilities as determined by a group of appraisers as outlined in Paragraph 3.05. However, the City shall have the right to remove all moveable (non-permanent) recreational facilities at the expiration, cancellation or termination of this Agreement

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

2.11 **Required Insurance Coverages.** Each party acknowledges without waving 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 wavier 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 or \$2,000,000 Combined Single Limits. Automobile Liability shall be maintained by each party, with limits of not less than a \$1,000,000 Combined Single Limit. 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.

2.11.1 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).

2.11.2 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.

2.11.3 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.

2.11.4 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.

2.12 **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 City:	Cathy Swanson-Rivenbark, City Manager City of Hollywood Florida 2600 Hollywood Boulevard, Hollywood, Florida 33022
With a Copy to:	Chuck Ellis, Director, Parks & Recreation Cultural Arts 1405 S. 28th Avenue, Hollywood, Florida 33022

2.13 **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. Lessee 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 Cities 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.

2.14 **Indemnification.** To the extent permitted by law, City and SBBC each agree to indemnify, defend and hold the other, including their officers, agents and employees, harmless from and against any and all claims, damages, losses, liabilities, causes of action of any kind or nature whatsoever arising out of or because of the use and occupancy of any facilities licensed hereunder, providing that if such claim, damage, loss, liability or cause of action is due to the joint or concurrent negligence of the indemnitor and the indemnitee, their respective responsibilities hereunder shall be in the same proportion that the negligent acts or omissions of each contributes thereto. This indemnification shall not be limited to the amount of comprehensive general liability insurance that each party is required to provide under this Agreement. Each party reserves the right to select its own counsel in any such proceeding and all costs and fees associated therewith shall be the responsibility of the indemnitor under this indemnification agreement. Compliance with the foregoing shall not relieve the indemnitor of any liability or other obligation under this Agreement. 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, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.**

(a) It is specifically agreed between the parties hereto that at any time SBBC desires to cancel and/or terminate this entire Agreement or any designated portion of the Leased Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have the right to do so with or without cause. SBBC's determination to cancel this lease 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 recreational facilities. 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 Leased 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 Leased Premises, the City shall have the right, subject to SBBC's purchase option described below, to remove any and all such fixtures and 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 Leased 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 Leased Premises to the condition which the same was found upon the Cities first entering the Leased Premises hereunder. If, upon cancellation by the City; SBBC wishes to purchase the City-installed recreational fixtures and/or 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) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination pursuant to Section 3.05.

3.07 **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.

3.08 **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.

3.09 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.10 **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.

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

3.12 **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.

3.13 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.14 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

FOR SBBC

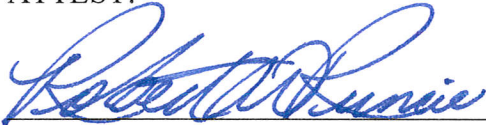
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: 

Patricia Good, Chair

ATTEST:



Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:

 07/24/14
Office of the General Counsel

FOR CITY

(Corporate Seal)

ATTEST:

Peter Bober, Mayor

By: _____
Cathy Swanson-Rivenbark, City Manager

Patricia A. Cerny, MMC, City Clerk

Endorsed as to Form & Legality for the
Use and Reliance of the City of Hollywood,
Florida, only.

Jeffrey P. Sheffel, City Attorney

STATE OF _____

COUNTY OF _____

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

EXHIBIT A

