RESOLUTION NO. R-2013-63

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A JOINT USE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, IN SUBSTANTIALLY THE ATTACHED FORM, SETTING FORTH THE TERMS AND CONDITIONS OF THE JOINT USE OF THE SCHOOL GYMNASIUM LOCATED AT THE FORMER SITE OF NORTH MIAMI HIGH SCHOOL; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, Section 163.01, Florida Statutes, authorizes public agencies to enter into interlocal agreements for their mutual benefit and to make available facilities to service the needs of local communities; and

WHEREAS, on December 13, 2005, the City of North Miami ("City") and The School Board of Miami-Dade County, Florida ("School Board"), entered into an Interlocal Agreement, as subsequently amended on March 1, 2006, providing for mutual cooperation relating to the financing, construction, maintenance and operation of new educational and recreational facilities for the benefit of the City, the School Board, students and residents; and

WHEREAS, on April 30, 2011, the City and School Board entered into an Interlocal Construction Agreement ("Construction Agreement"), regarding the rehabilitation, operation and maintenance of the gymnasium located at the former site of North Miami Senior High School ("Gymnasium"), with the work to be jointly funded by the City and School Board; and

WHEREAS, the City and School Board, pursuant to the Construction Agreement, desire to enter into a Joint Use Agreement setting forth the terms and conditions of the joint use of the Gymnasium; and

WHEREAS, the Mayor and City Council find that the execution of a Joint Use Agreement, in substantially the attached form, is in the best interest of the City, the general public and student population.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a Joint Use Agreement between the City of North Miami and the School Board of Miami-Dade County, in substantially the attached form, setting forth the terms and conditions of the joint use of the school gymnasium located at the former site of North Miami High School.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 4-1 vote of the Mayor and City Council of the City of North Miami, Florida, this 25 day of June, 2013.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Vice Mayor Steril

Seconded by: Mayor Tondreau

Vote:

Mayor Lucie M. Tondreau	✓ (Yes)	(No)
Vice Mayor Marie Erlande Steril	x (Yes)	(No)
Councilperson Scott Galvin	(Yes)	x (No)
Councilperson Carol F. Keys, Esq.	x (Yes)	(No)
Councilperson Philippe Bien-Aime	x (Yes)	(No)

JOINT USE AGREEMENT

GYMNASIUM

This Joint Use Agreement (this "**Agreement**") is made and entered into on this ____ day of _____, 2013, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a public body corporate and politic existing under the laws of the State of Florida (hereinafter "**School Board**") and the **CITY OF NORTH MIAMI**, a Florida municipal corporation (hereinafter "**City**"). The School Board and the City are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The Parties entered into an Interlocal Agreement dated December 13, 2005, as amended by First Amendment to Interlocal Agreement dated as of March 1, 2006 (as so amended, the "**Original Interlocal Agreement**"), providing for mutual cooperation relating to the financing, construction, maintenance and operation of new educational and recreational facilities within the City of North Miami, Florida, for the benefit of the City and the School Board and their respective student populations and residents.

B. Pursuant to the Original Interlocal Agreement, the School Board and the City agreed to use good faith efforts to negotiate and finalize "**Project Documents**," including *inter alia* joint use agreements, intended to govern the specific rights and obligations of the Parties with respect to the contemplated educational and recreational facilities. As part of the Project Documents, the Parties agreed to enter into joint use agreements for the sharing and cooperative use of certain educational and recreational facilities.

C. The City and the School Board have subsequently entered into that certain Amended and Restated Interlocal Agreement, restructuring the terms and conditions of the Original Interlocal Agreement to provide for the School Board to be responsible for the design, development and construction of the contemplated educational and recreational facilities (the "**Interlocal Agreement**").

D. Among other things, the Interlocal Agreement provides for the development and construction by the School Board of a replacement for North Miami Senior High School, including demolition of its gymnasium, North Miami Middle School and a new elementary school, and related athletic and recreational facilities on lands owned by the School Board.

E. After extensive negotiations, the Parties entered into that certain Interlocal Construction Agreement dated as of April 30, 2011 (the "**Construction Agreement**") regarding the rehabilitation, operation and maintenance of the gymnasium located at the former site of North Miami Senior High School (the "**Gymnasium**"), wherein the parties agreed to retain the Gymnasium for renovation by the School Board, with the work to be jointly funded by the Parties in accordance with the terms of the Construction Agreement. Pursuant to the Construction Agreement, this Agreement shall set forth the terms and conditions of the joint use of the Gymnasium.

F. Pursuant to the terms and conditions of the Interlocal Agreement, the School Board and City intend to enter into a future joint use agreement to set forth the sharing or joint

use of the remainder of the athletic and related amenities to be constructed by the School Board and located on the former site of North Miami Senior High School.

AGREEMENT

The parties agree that the foregoing Recitations are true and correct and are adopted herein as though repeated verbatim. In consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Definitions.

1.1 Agreement. This Joint Use Agreement, together with all exhibits, amendments and modifications hereto.

1.2 Amended and Restated Interlocal Agreement. As defined in Recitation C of this Agreement.

1.3 City. The City of North Miami, a Florida municipal corporation. The City's contact information is:

City of North Miami, Florida
Attention: City Manager
776 N.E. 125th Street
North Miami, Florida 33161
Telephone: (305) 893-6511
Facsimile: (305) 893-1367

1.4 City Hours. Non-School Hours, less and excluding the hours during Non-School Hours during which the School Board uses the Gymnasium for Previously Scheduled School Events and Special School Events.

1.5 Construction Agreement. As defined in Recitation E of this Agreement.

1.6 Default. As defined in Section 14.1 of this Agreement.

1.7 Default Notice. As defined in Section 14.1 of this Agreement.

1.8 Defaulting Party. As defined in Section 14.1 of this Agreement.

1.9 District. Miami-Dade County Public Schools.

1.10 Elementary School. Arch Creek Elementary School.

1.11 Execution Date. The later of the execution dates set forth below the signature lines for the City and the School Board.

1.12 Gymnasium. The existing gymnasium located at the former site of North Miami Senior High School to be retained and renovated by the District, for the joint use by the Parties, as more particularly depicted on **Exhibit "A"** attached hereto and made a part hereof.

1.13 Joint Use Committee. A committee made up of representative(s) from the School Board and the City, responsible for establishing, monitoring, and modifying the joint uses of the Gymnasium.

1.14 Middle School. North Miami Middle School

1.15 Non-Defaulting Party. As defined in Section 14.1 of this Agreement.

1.16 Non-School Days. Any days that are not School Days.

1.17 Non-School Hours. All hours that are not School Hours.

1.18 Original Interlocal Agreement. As defined in Recitation A of this Agreement.

1.19 Parties. As defined in the preamble to this Agreement.

1.20 Previously Scheduled City Events. Any City previously scheduled events and functions utilizing the Gymnasium Non-School Hours, as set forth in Section 5.1.4 hereof.

1.21 Previously Scheduled School Events. Any School Board previously scheduled events and functions during Non-School Hours, as set forth in Section 5.1.2.

1.22 Project Documents. As defined in Recitation B of this Agreement.

1.23 School Administrator(s). The principal of the Middle School, or his/her designee, and the principal of the Elementary School, or his/her designee.

1.24 School Board. The School Board of Miami-Dade County, Florida. The School Board's contact information is:

School Board of Miami-Dade County
Attention: Michael A. Levine, Executive Director, Planning, Design & Sustainability
1450 NE 2nd Avenue
Room 525
Miami, Florida 33132
Telephone: 305-995-7288
Facsimile: 305-995-4760

1.25 School Days. Any days that the public schools of Miami-Dade County are open and in session.

1.26 School Hours. The hours commencing 30 minutes before the earlier of the start of the official School Day for the Elementary School and Middle School and ending 45 minutes after the later of the end of the official School Day for the Elementary School and Middle School, Monday through Friday on School Days.

1.27 Special City Events. As defined in Section 5.1.4 of this Agreement.

1.28 Special School Events. Any School Board special events and functions, not previously scheduled, during Non-School Hours, as set forth in Section 5.1.3.

1.29 Substantial Completion Date. The date a temporary certificate of occupancy is issued for the Gymnasium.

1.30 Term. As defined in Section 2 of this Agreement.

2. Term of Agreement. This Agreement shall be effective as of the Execution Date. The Term shall commence on the day following the Substantial Completion Date and end forty (40) years thereafter ("Term"), unless terminated or renewed as hereinafter provided. The School Board and City, through their authorized designees, shall confirm the Substantial Completion Date and the expiration Date of the Term in a separate written instrument within ten (10) days following request by either party, and such fully executed instrument shall become a part of this Agreement and incorporated herein by reference.

3. Renovation of Gymnasium . The School Board shall be responsible for the renovation of the Gymnasium pursuant to the Construction Agreement.

4. Design, Development and Construction Costs. Responsibility for the design, development, construction and financing of the Gymnasium renovations shall be in accordance with the Construction Agreement.

5. Joint Use of Facilities. The Parties intend that the Gymnasium shall be used jointly by the School Board and the City for the benefit of the student population, City residents and the general public, as provided in this Agreement. In addition, the City shall have the right to use, during its period of use, certain portions of the parking facilities at the Elementary School and Middle School, as agreed to by the Joint Use Committee. Use of such parking facilities shall be in accordance with all terms and conditions of this Agreement.

5.1 Hours of Use.

5.1.1 School Hours. The School Board shall have the exclusive use of the Gymnasium during School Hours for the benefit of the student population, in accordance with Sections 6.2.4 and 10.1 hereof and the provisions of this Agreement.

5.1.2 Previously Scheduled School Events; Non-School Hours. The School Board has the right to use the Gymnasium, as required by the School Board during Non-School Hours, for the benefit of the student population, for previously scheduled school events and activities, such as summer school, after-school care, intramural sports, extra-curricular athletics activities ("Previously Scheduled School Events"). The School

Administrator shall meet with the Joint Use Committee and/or the City's Parks and Recreation Director prior to the start of each school year, or as soon thereafter as is practical, to establish a calendar or agenda of previously scheduled proposed uses by the School Board of the Gymnasium during Non-School Hours for the upcoming school year.

5.1.3 Not Previously Scheduled, Special School Events; Non-School Hours. The School Board has the right to use the Gymnasium during Non-School Hours for the benefit of the student population, for not previously scheduled special school events and functions, provided: (a) such facilities are available for use during such Non-School Hours and the City has not already scheduled events or activities for such facilities with the Joint Use Committee; and (b) The School Administrator notifies the Joint Use Committee and/or the City's Parks and Recreation Director at least 72 hours in advance as to the one-time or infrequent use ("Special School Event").

5.1.4 City Hours. The City has the right to use the Gymnasium during City Hours, in accordance with Sections 6.2.4 and 10.2 hereof and the provisions of this Agreement. The City's Parks and Recreation Director shall meet with the Joint Use Committee and/or the School Administrators prior to the start of each school year, or as soon thereafter as practical, to establish a calendar or agenda of previously scheduled proposed uses by the City of the Gymnasium during Non-School Hours for the upcoming school year ("Previously Scheduled City Events"). Further, in a manner similar to the process outlined in Section 5.1.3, the City has the right to use the Gymnasium during the Non-School Hours for the benefit of the City, for not previously scheduled special City events and functions, provided: (a) such facilities are available for use during such Non-School Hours and the School Board has not previously scheduled events or activities for such facilities; and (b) the City's Parks and Recreation Director notifies the Joint Use committee and/or the School Administrators at least 72 hours in advance of the intended use ("Special City Event").

5.2 Scheduling of Use of Facilities. The Joint Use Committee may, as necessary, further refine and develop the procedure for the scheduling and coordination of Previously Scheduled School Events, Special School Events, Previously Scheduled City Events and Special City Events, as set forth in Sections 5.1.2, 5.1.3 and 5.1.4 hereinabove, during Non-School Hours.

5.3 Certain Responsibilities With Respect to the Gymnasium. Subject to the provisions of Section 5.1.4, the City shall be allowed to use the Gymnasium during City Hours, for the use and enjoyment by the City, its residents, the general public, and not-for-profit entities providing recreational services and programs to the City. The City shall be responsible during City Hours for all use, maintenance, clean-up, risk management and supervision of the Gymnasium and other terms and conditions set forth in this Agreement, the same as if the City, itself, were utilizing the facilities. The City shall be responsible during actual usage times for all use, maintenance, clean-up, risk management and supervision of the Gymnasium and other terms and conditions set forth in this Agreement. If the City allows use of the Gymnasium by third party entities, such as not-for-profit entities or other legal entities and organizations, the City shall require such entities or groups to provide liability insurance, insuring both the City and the School Board, in accordance with the rules and regulations established from time to time by both

the City and the School Board for use of their facilities. The City shall obtain a certificate of insurance evidencing same and shall provide a copy thereof to the School Board.

5.4 Facilities Fees and Certain Out-of-Pocket Costs. The City may establish, collect and retain fees for the use of the Gymnasium by the City, or by those individuals or entities utilizing the Gymnasium under the auspices of the City, according to the City's fee schedule for comparable City facilities. The City shall reimburse the School Board for actual out-of-pocket expenses incurred by the School Board for use of Gymnasium, such as custodial costs (if School Board custodial personnel are required) and the cost of consumables such as soaps and paper products.

6. Joint Use Committee. Other than as provided elsewhere in this Agreement, the Joint Use Committee will be responsible for coordinating and resolving any issues pertaining to the scheduling, use, operation, maintenance and security of the Gymnasium.

6.1 Joint Use Committee Members. The Joint Use Committee will be composed of the following individuals: the Middle School Administrator, or his/her designee; the Elementary School Administrator, or his/her designee; and the City's Parks and Recreation Director, or his/her designee.

6.2 Joint Use Committee Responsibilities. Other than as provided elsewhere in this Agreement, prior to the commencement of each school year, or as soon thereafter as practical, the Joint Use Committee will be responsible for the following:

6.2.1 Use Schedule. Establishing and maintaining a schedule for use of the Gymnasium, during Non-School Hours, consistent with the terms and conditions set forth in Section 5.1 hereinabove;

6.2.2 Allocation of Costs. On an annual basis, the School Board shall present to the Joint Use Committee, a proposed budget and proposed allocation of costs for all operating and maintenance expenses of the Gymnasium, including, without limitation, equipment purchases and field maintenance. The Joint Use Committee shall review such proposed budget and proposed allocation of costs and shall allocate costs between the City and the School Board, from time to time based on usage of the Gymnasium and other relevant considerations.

6.2.3 Intentionally Deleted.

6.2.4 Rules and Regulations. The City's rules and regulations applicable to City parks shall apply to its use of the Gymnasium during periods of use of such facilities by the City and the City will be responsible for enforcement thereof. The School Board's rules and regulations applicable to educational and recreational facilities shall apply to its use of the Gymnasium when the School Board is using such facilities and the School Board will be responsible for the enforcement thereof.

6.2.5 Arbitration. In the event that the Joint Use Committee Members are unable to unanimously reach an agreement or deadlock on a certain issue(s) or dispute within the scope of its responsibilities pursuant to this Agreement, the City Manager, or his/her

designee, and the School Board's Region Superintendent, or his/her designee, shall be called to assist the Joint Use Committee in its resolution of the issue(s) or dispute. In the further event that the Joint Use Committee is unable to reach a resolution of its issue(s) or dispute with the assistance of the City Manager and the School Board's Region Superintendent, the matter shall be referred to arbitration in accordance with the procedures set forth herein.

6.2.6 Panel. A panel of arbitrators ("Arbitration Panel") shall be established when arbitration specifically is required by Section 6.2.5 of this Agreement.

(i) The appointments to the panel shall be made in the following manner:

(a) The City shall name one member;

(b) The School Board shall name one member; and

(c) The aforesaid members shall promptly name a third member.

(ii) If either party shall fail to designate a member within ten (10) days after a written request to do so by the other party, then such other party may request the President of the Florida Chapter of the American Arbitration Association to designate a member, who when so designated shall act in the same manner as if he had been the member designated by the party so failing to designate an arbitrator. If the two members are unable to agree upon a third member within ten (10) days from the last date of designation, such third member shall be designated by the President of the Florida Chapter of the American Arbitration Association, upon the request of either of the two members.

6.2.7 Actions, Hearings and Decisions. All actions, hearings and decisions of the Arbitration Panel shall be conducted, based upon and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In determining any matter before them, the Arbitration Panel shall apply the terms of this Agreement, and shall not have the power to vary, modify or reform any terms or provisions of the Agreement in any respect. The Arbitration Panel shall afford a hearing to the City and to the School Board and the right to submit evidence with the privilege of cross-examination on the question at issue. All arbitration hearings shall be held at a place designated by the Arbitration Panel in Miami-Dade County, Florida. A hearing shall be commenced within thirty (30) days following the selection of the last of the three arbitrators. A court reporter shall make a transcript of the hearing. The Parties and the Arbitration Panel shall use their reasonable good faith efforts to conclude the hearing within ten (10) days. The Parties shall be entitled to such pre-trial discovery as they may agree, or as determined by the Arbitration Panel. The Arbitration Panel shall have the right to question witnesses at the hearing, but not to call witnesses. The Arbitration Panel may grant continuances for good cause or with the agreement of both Parties. The Arbitration Panel shall

render a decision at the close of the hearing. If no determination is rendered within such time, unless the Parties agree otherwise, a new Arbitration Panel shall be selected as described above, but the new Arbitration Panel shall render a determination solely upon review of the record of the hearing without a further hearing. The Arbitration Panel selected hereunder shall agree to observe the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the American Arbitration Association and the American Bar Association, or any successor code. The decision of a majority with respect to any matter referred to it under this Agreement shall be final, binding and conclusive on the City and School Board and enforceable in any court of competent jurisdiction. Together with the determination, the Arbitration Panel shall provide a written explanation of the basis for the determination. Each Party shall pay the fees and expenses of the member of the Arbitration Panel designated by such Party, such Party's counsel and witness fees, and one-half (½) of all expenses of the third member of the Arbitration Panel.

6.2.8 Additional Provisions Regarding Arbitration. The City and School Board recognize that the foregoing arbitration provisions and procedures may not be the most appropriate in all instances where arbitration is provided for in this Agreement or where the parties otherwise may agree to arbitration. In order to provide for such instances where other arbitration provisions and procedures may be more appropriate or desirable to the instances where arbitration specifically may be contemplated under this Agreement, the City and the School Board may, but shall not be obligated to, amend the foregoing provisions of this Section and/or modify the arbitration procedures set forth therein and/or agree to the application of different arbitration provisions and procedures in such instances.

7. Alcoholic Beverages. No alcoholic beverages may be sold or consumed at the Gymnasium at any time during the term of this Agreement.

8. Maintenance and Repair of Gymnasium.

8.1 Performance of Maintenance and Repair Responsibilities.

The School Board, at its cost and expense, will be the party responsible for performing all maintenance and repair of the Gymnasium, including, without limitation; preparation and maintenance of buildings; lighting maintenance and repair; trash removal, and cleaning. All maintenance and repair of the Gymnasium shall be performed by the School Board in a good and workman like manner, in a clean, neat and safe condition, and in a manner consistent with the standards for public educational facilities. Notwithstanding the foregoing, the City and the School Board shall each be responsible to clean and make safe the Gymnasium after their respective use.

8.2 Payment for Maintenance and Repair. The School Board shall pay the cost of maintenance and repair of the Gymnasium, with the City to reimburse the School for its proportionate share of maintenance costs based on the hours of use of the Gymnasium, as well as any other determining factors, as established by the Joint Use Committee. In addition, the City shall be responsible for payment of the cost of repairing damages to the Gymnasium which occur during the City's use thereof (including use by third parties authorized by the City), and shall occur as a result of the City's use or use by such authorized third parties.

9. Utility Costs. The costs for utility services for the Gymnasium shall be paid by the School Board, with the City to reimburse the School Board for the City's prorata share of utilities based on a reasonable allocation according to the use of the Gymnasium, as well as other determining factors, as established by the Joint Use Committee.

10. Security.

10.1 Security during School Hours, Previously Scheduled School Events and Special School Events. During School Hours and all hours of use by the School Board, including Previously Scheduled School Events and Special School Events, security for the Gymnasium shall be provided by the School Board, in accordance with standard School Board operating procedures, and at the School Board's expense.

10.2 Security During City Hours, Previously Scheduled City Events and Special City Events. During City Hours and all hours of use by the City, including Previously Scheduled City Events and Special City Events, security for the Gymnasium shall be provided by the City, at the City's expense, in accordance with standard City operating procedures.

10.3 Compliance with Jessica Lunsford Act. In accordance with the requirements of Sections 1012.32, 1012.465, and 435.04, Florida Statutes (2004) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, and to the extent required by applicable law, the City agrees that all of its employees who provide or may provide services under this Agreement have completed all background screening requirements as outlined in the above-referenced statutes. The City agrees to bear any and all costs associated with acquiring the required background screenings. The City agrees to require all its affected employees to sign a statement, as a condition of employment with the City in relation to performance under this Agreement, that the employee will abide by the terms and notify the City/Employer of any arrest or conviction of any offense enumerated in Section 435.04, Florida Statutes, within forty-eight (48) hours of their occurrence. The City agrees to provide the School Board with a list of all of its employees who have completed background screening as required by the above-referenced statutes and meet the statutory requirements contained therein. The City agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. The City further agrees to notify the School Board immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any disqualifying offense. Failure by the City to notify the School Board of such arrest or conviction within forty-eight (48) hours of being put on notice by the employee and within five (5) days of its occurrence shall constitute a Default hereunder. The parties further agree that failure by the City to perform any of the duties described in this paragraph shall constitute a material breach of this Agreement entitling the School Board to immediately pursue such remedies at law or in equity as to which the School Board may be entitled under the laws of the State of Florida, including, without limitation, an action for specific performance and/or an action to enjoin such breach. To the extent required by applicable law, the City agrees to comply with all sections of the Florida K-20 Education Code, Title XLVIII, Florida Statutes, as it presently exists, and further as it may be amended from time to time. Further, the City agrees that

failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Agreement and may result in the termination of this Agreement by the School Board.

11. Insurance.

11.1 Property Insurance. The parties will provide such property insurance as required by the Amended and Restated Interlocal Agreement and the Construction Agreement, or as otherwise agreed to by the City's Risk Management and District's Risk Management departments.

11.2 Public Liability Insurance. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the School Board and City shall each maintain either a public liability insurance policy or an ongoing self-insurance program for public liability, automobile liability and worker's compensation insurance, and shall provide reasonably satisfactory evidence of such insurance or ongoing self insurance program to the other Party and the Joint Use Committee.

12. Liability for Damage or Injury.

12.1 City Liability. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the City shall not be liable for any damage or injury which may be sustained by the School Board, or any person using the Gymnasium, other than damage or injury resulting from the negligence or improper conduct of City, its agents, representatives or employees, or resulting from the City's failure to perform its obligations under this Agreement.

12.2 School Board Liability. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the School Board shall not be liable for any damage or injury which may be sustained by the City, or any person using the Gymnasium, other than damage or injury resulting from the negligence or improper conduct of the School Board, its agents, representatives or employees, or resulting from the School Board's failure to perform its obligations under this Agreement.

13. Indemnification.

13.1 Indemnification by City. The City does hereby agree to indemnify and hold harmless the School Board, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the City shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the City arising out of the same incident or occurrence, exceeds the sum of $300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the City. However, nothing herein shall be deemed to indemnify the School Board from any liability or

claim arising out of the negligent performance or failure of performance of the School Board or as a result of the negligence of any unrelated third party.

13.2 Indemnification by School Board. The School Board does hereby agree to indemnify and hold harmless the City, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the School Board shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the School Board arising out of the same incident or occurrence, exceeds the sum of $300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the School Board. However, nothing herein shall be deemed to indemnify the City from any liability or claim arising out of the negligent performance or failure of performance of the City or as a result of the negligence of any unrelated third party.

13.3 Survival; Sovereign Immunity. The provisions of this Article 13 shall survive the expiration or early termination or cancellation of this Agreement. In addition, nothing in this Agreement is intended to operate as a waiver of either Party's sovereign immunity.

14. Defaults.

14.1 Notice. If any Party to this Agreement (the "Defaulting Party") fails to perform under this Agreement or fails to comply with the terms and conditions of this Agreement (a "Default"), the other Party hereto (the "Non-Defaulting Party) shall send written notice (the "Default Notice") to the Defaulting Party according to the notice requirements set forth in this Agreement.

14.2 Opportunity to Cure. Except with respect to a violation of Section 10.3 hereof, the Defaulting Party shall have a period of 30 days after receipt of the Default Notice to either cure its Default or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party's resolution of the Default and a schedule for the curing of the Default; provided, however, that if: (a) the Default cannot reasonably be cured within such 30 day period and the condition giving rise to the Default is reasonably capable of being cured within a reasonable period of time, and (b) the Defaulting Party shall have in good faith promptly and diligently commenced to cure the Default within the 30 day period, then so long as the Defaulting Party diligently and continuously proceeds to cure the Default, such Default shall not be deemed an event of default subject to the remedies provided in Section 14.3.

14.3 Remedies. If, within 30 days after receipt of Default Notice, the Defaulting Party fails to cure its Default, or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party's resolution of the Default and a schedule for the curing of the Default, or fails to in good faith promptly and diligently commence to cure the Default, the Non-Defaulting Party shall have the right to seek all remedies available at law or in equity, which may include, but not be limited to, the right to cancel the Agreement, seek damages and/or specific performance.

15. User Fee. The City shall pay a user fee to the School Board in connection with its use of the Gymnasium set forth in this Agreement in the amount of One Dollar ($1.00) per year. At the commencement of the Term, the City shall pay the School Board upfront a lump sum payment in the amount of Forty Dollars ($40.00) for the full term of this Agreement.

16. Addition or Modification of Existing Facilities.

16.1 Required Modification of Gymnasium. In the event that upgrades, modifications or changes to the Gymnasium are required to meet or comply with new or revised codes, laws or governmental requirements or regulations applicable to the Gymnasium, the School Board shall be responsible, at its expense, for any such upgrade, modification or change, with such cost to be shared equally between the Parties. If such upgrades, modifications or changes are required only as a result of the City's use thereof, the City shall be responsible for all costs associated with such upgrades, modifications or changes. Conversely, if such upgrades, modifications or changes are required only as a result of the School Board's use thereof, the School Board shall be responsible for all costs associated with such upgrades, modifications or changes.

16.2 Elective Alterations, Replacements, Renovations, Additions and Improvements to Gymnasium. The School Board shall have the right to make alterations, replacements, renovations, additions and improvements to the Gymnasium, at its cost and expense, as the needs of the student population dictate and/or in furtherance of the School Board's educational and recreational goals, provided that the quality of such alterations, replacements, renovations, additions and improvements are (i) consistent with the then current governing rules and standards for public educational facilities, and (ii) will not result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alterations, replacements, renovations, additions or improvements.

17. Damage or Destruction of Gymnasium. Other than in the event that damage or destruction to the Gymnasium is caused by the City, if damage occurs from fire, windstorm or other casualty to the Gymnasium, then in such event the School Board shall, at its expense, cause said damage to be repaired and the Gymnasium to be restored to substantially the condition in which it existed immediately prior to such damage or destruction, within one hundred eighty (180) days from the date of such damage or destruction, or such other reasonable time period as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the City, may, at its sole option, place the School Board in default. In addition, if and to the extent that the Gymnasium or portions thereof are not useable by the City for their intended use, because of such damage, then the City's obligation with respect thereto shall be equitably and proportionately abated until restoration of such amenities.

The City agrees that any damage or destruction sustained to the Gymnasium as a result of the City's actions shall be repaired by the City at the City's sole cost and expense.

18. Naming Rights to Gymnasium. The School Board shall have the right, within its sole discretion, to name the Gymnasium, in compliance with School Board Policy. The School Board shall work collaboratively with the City, in naming the Gymnasium.

19. Securing of Certain Areas. The City and the School Board shall be responsible for securing and locking the Gymnasium at the completion of their respective periods of use.

20. Miscellaneous.

20.1 Amendment. No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by all of the Parties to this Agreement.

20.2 Assignment. This Agreement may not be assigned or transferred by any Party to this Agreement, except to a governmental entity which succeeds to the rights of a Party to this Agreement.

20.3 Construction of Agreement. The Parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The Parties acknowledge that they have thoroughly read this agreement, including all exhibits and attachments hereto, and have sought and received whatever competent legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

20.4 Counterparts. This Agreement may be signed in any number of counterparts, each of which constitutes the Agreement of the Parties and each of which will be treated as an original.

20.5 Entire Agreement. This Agreement sets forth the entire agreement between the Parties relating to the joint use of all facilities. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties.

20.6 Gender. In this Agreement, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular as the context requires.

20.7 Governing Law; Compliance with Laws. This Agreement will be interpreted and enforced in accordance with Florida law. The Parties agree that they shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Americans with Disabilities Act and the Jessica Lunsford Act, as all may be further amended from time to time and the extent required by applicable law.

20.8 Notices. All notices and other communications which are required to be given under this Agreement shall be in writing and must either be (a) hand-delivered, (b) sent by Federal Express or a comparable overnight mail service, (c) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, (d) electronic mail, or (e) sent by

telephone facsimile transmission with transmission receipt, with an original copy of the transmission mailed by regular first-class mail not later than the first Business Day after the facsimile is sent. Notices should be sent to City and School Board at their respective addresses set forth in Section 1 of this Agreement. Notice is effective upon delivery or refusal of delivery of notice. Any notice delivered after 5:00 p.m. will be deemed to be delivered on the following Business Day. The addressees and addresses for notice may be changed by giving notice. Until written notice of a change in address is delivered, the last addressee and address stated in this Agreement in effect for all purposes.

20.9 Personal Liability of Parties. The Parties acknowledge that this Agreement is entered into by two governmental entities. The Parties agree that no individual elected official, employee, or representative of any Party to this Agreement shall have any personal liability under this Agreement.

20.10 Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.

20.11 Severability. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as to do so would not affect the overall purpose or intent of the Agreement.

20.12 Successors and Assigns. This Agreement will inure to the benefit of and be binding upon City and School Board, and their respective legal representatives, successors, and permitted assigns.

20.13 Waiver. No waiver of any provision of this Agreement will be deemed to have been made unless such waiver is in writing and signed by the Party waiving the provision. The failure of any Party to insist upon strict performance of any provision of this Agreement shall not be construed as waiving or relinquishing such provision in the future.

20.14 Enforcement of Agreement. In the event that either Party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that each Party shall be responsible for its own fees and costs, including reasonable attorneys' fees and costs, of trial, alternative dispute resolutions, or appellate proceedings. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

20.15 Covenant Running with the Land. The Parties agree that all of the terms, covenants and provisions herein shall be covenants running with the Gymnasium parcel and shall be binding upon and shall inure to the benefit of the Parties hereto and their respective grantees, successors and assigns. No third parties shall be deemed to be third party beneficiaries under this Agreement nor shall any third party be entitled to enforce this Agreement against the signatories hereto.

20.16 Subordination. This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases, and the rights of the School Board under those leases and to all financing that may now or hereafter affect the leases, and to all renewals,

modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, the City shall execute, within a reasonable period of time, any certificate that the School Board may request.

20.17 Recording of Agreement. The Parties agree that a fully executed copy of this Agreement may be recorded among the Public Records of Miami-Dade County, Florida.

20.18 Priority. If there are any conflicts between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of either the Interlocal Agreement, the Ground Lease or the Construction Agreement, the terms, conditions and provisions of the Interlocal Agreement, the Ground Lease or the Construction Agreement shall govern and prevail over the provisions of this Agreement.

20.19 Florida Public Records Law; Audits and Inspections & Access to Records. This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to record retention. If there are any conflicts between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of either the Interlocal Agreement, the Ground Lease or the Construction Agreement, the terms, conditions and provisions of the Interlocal Agreement, the Ground Lease or the Construction Agreement shall govern and prevail over the provisions of this Agreement.

The City acknowledges and accepts the authority of the School Board to request and authorize audits, inspections, and review, including, but not limited to, the authority to access the City's records, its' legal representatives' and contractors' records and the obligation of the City to retain and make those records available upon request, and in accordance with all applicable laws. The City shall keep records to show its compliance with this Agreement. In addition, the City's contractors and subcontractors must make available, upon the School Board's request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The City and its contractors and sub-contractors shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement.

The City shall incorporate this provision into every contract that it enters into relating to the Gymnasium.

20.20 Representations. The City has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the City of its obligations under this Agreement, have been duly authorized by all necessary actions of the City, and do not contravene or conflict with any rules, regulations, policies or laws governing the City, or any other agreement binding on the City. The individual(s) executing this Agreement on behalf of the City has/have full authority to do so.

The School Board has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the School Board of its obligations under this Agreement, have been duly authorized by all

necessary actions of the School Board, and do not contravene or conflict with any rules, regulations, policies or laws governing the School Board, or any other agreement binding on the School Board. The individual(s) executing this Agreement on behalf of the School Board has/have full authority to do so.

20.21 Authority of Superintendent. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the School Board to grant or deny any and all modifications and approvals required under this Agreement, including, without limitation, placing the City in default, and renewing, cancelling and/or terminating the Agreement as provided herein.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS JOINT USE AGREEMENT TO BE EXECUTED IN THEIR NAMES BY THEIR DULY AUTHORIZED OFFICERS ON DATES SET FORTH BELOW THEIR NAMES.

ATTEST:

_____
City Clerk

TO THE CITY: APPROVED AS TO FORM:

_____
City Attorney

CITY OF NORTH MIAMI,
a Florida municipal corporation

By:_____
City Manager

Date Executed: _____

TO THE SCHOOL BOARD: APPROVED AS TO FORM & LEGAL SUFFICIENCY:

_____
School Board Attorney

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By:_____
Alberto M. Carvalho, Superintendent of Schools

Date Executed: _____

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