

MEMORANDUM

Agenda Item No. 8(F)(3)

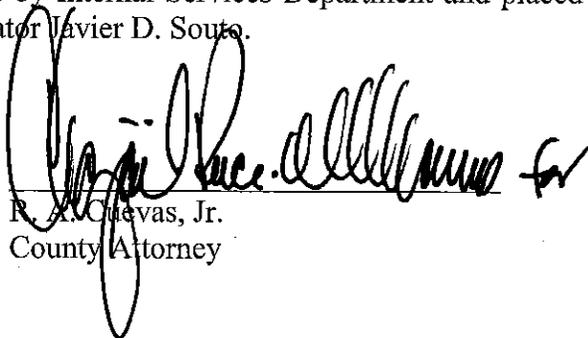
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving, Pursuant to Section 125.38, Florida Statutes, terms of Amended and Restated Lease Agreement between Miami-Dade County and the SEED Foundation, Inc., a Washington D.C. not-for-profit corporation, for developable land located at the Kendall Complex, 11025 SW 84 Street, to be used as a college preparatory boarding school for at-risk, low-income boys and girls, with a total gross rental revenue to the County estimated to be \$4,200,068.00

The accompanying resolution was prepared by Internal Services Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: June 30, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor



Subject: Amended and Restated Lease Agreement with The SEED Foundation, Inc., a Foreign Not-for-Profit Corporation, Located at the Kendall Complex in Unincorporated Miami-Dade County, Florida, 11025 SW 84 Street
Lease No. 30-4031-000-0170-L11

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of an Amended and Restated Lease Agreement between Miami-Dade County (County) as Landlord, and The SEED Foundation, Inc. (SEED), a Washington, D.C., not-for-profit corporation, as the Tenant. More specifically, the resolution does the following:

- Authorizes the leasing of approximately seven (7) acres of developable land with five (5) buildings located at the Kendall Complex (11025 SW 84 Street, Miami, Florida) in unincorporated Miami-Dade County;
- Authorizes an initial lease term of 20 years, plus two (2) additional 34-year renewal option periods, for a total possible lease term of 88 years;
- Delegates to the County Mayor or the County Mayor's designee the authority to accept a reduction in a portion of the required rent payment in exchange for the performance of certain renovations, repairs, improvements, and/or maintenance tasks to the County's adjacent property;
- Authorizes the construction of facilities to serve as a public boarding school to prepare boys and girls for college whose family income is below 200 percent of the federal poverty guidelines; and
- Authorizes the County to receive up to \$20,000 from SEED for the relocation of ARC of South Florida from one building to another at the Kendall Complex.

Scope

The property is located in County Commission District 10, which is represented by Senator Javier D. Souto.

Fiscal Impact/Funding Source

The revenue to the County for the initial 20-year term of the contract will be \$4,200,000 and paid in monthly installments pursuant to the Amended and Restated Lease Agreement, which is equivalent to \$13.77 per square foot. The revenue to the County during the two (2), 34-year renewal option periods is \$1.00 per year. Therefore, the total potential revenue is \$4,200,068 for an 88-year term.

Any revenues generated from the leasing of the property will be deposited into the Community Action and Human Services Department proprietary fund.

Track Record/Monitor

The County has no record of negative performance issues with SEED. The lease agreement was prepared by the Internal Services Department on behalf of the Community Action and Human Services Department. Dirk Duval, of the Real Estate Development Division in the Internal Services Department, is the lease monitor. A copy of this lease agreement will be provided to the Property Appraiser's Office within 30 days of its execution.

Delegation of Authority

The County Mayor or the County Mayor's designee will have the authority to: (1) execute the attached Amended and Restated Lease Agreement and exercise all other rights conferred therein; (2) accept up to \$20,000 from SEED for the relocation of the ARC of South Florida; (3) reduce a portion of the required rent payment in exchange for SEED performing certain renovations, repairs, improvements and/or maintenance tasks to the County's adjacent property, which tasks are requested and approved by the Community Action and Human Services Department and the amount of the credit against any rent payment is determined by the Community Action and Human Services Department; (4) cooperate with SEED in executing and/or otherwise securing a plat or waiver of plat for the property, if necessary; (5) waive the County's security interest in any personal property and/or trade fixtures belonging to SEED and/or the State of Florida, or the Miami-Dade County School Board for SEED's benefit in securing a loan; and (6) approve mortgages or encumbrances that are sought by SEED, against SEED's leasehold interest, and/or the leasehold interest of any assignee or sublessee in the property.

Background

SEED provides college preparatory educational opportunities to children in grades six (6) through 12 whose families meet certain income requirements (below 200 percent of the federal poverty guidelines) and risk factors (experience with the state child welfare system and public housing, being raised by a non-immediate family member or having an immediate family member who has been incarcerated). SEED was founded in 1997 and has campuses in both Washington D.C. and Maryland. At the beginning of the 2014-15 school year, SEED launched its inaugural class in South Florida at a temporary location at Florida Memorial College. Both SEED and the County desire to establish a permanent home for SEED's school and program. This will be accomplished with the approval of this Amended and Restated Lease Agreement, which authorizes SEED's development, including property improvements, of the entire subject property.

Resolution No. R-1066-13, approved by the Board on December 17, 2013, authorized the County to enter into a lease agreement with SEED for the use of four (4) buildings and the land surrounding the buildings at the Kendall Complex. On March 18, 2014, the Board adopted Resolution No. R-289-14, which approved an amendment to the lease agreement to acknowledge the name change of SEED's authorized sublessee at the subject property, which is Miami Boarding School, Inc. (d/b/a SEED School of Miami, Inc.).

The attached Amended and Restated Lease Agreement provides for a fifth building to be leased to SEED, which is currently occupied by ARC of South Florida, a not-for-profit organization. SEED has agreed to contribute up to \$20,000 toward the cost of relocating ARC of South Florida to another building at the Kendall Complex. The relocation is anticipated to cost less than \$20,000. This contribution is over and above the rent that SEED is required to pay the County.

The overall development of the leased property encompasses approximately seven (7) acres of developable land (304,920 square feet) with the buildings located on the property. The development will consist of the construction of a 24-hour college preparatory public boarding school. The primary purpose of the school is to provide a safe, structured learning environment for students. An illustration of the future campus is depicted in SEED's Development Concept (Exhibit B of the attached Amended and Restated Lease Agreement).

Further, the attached Amended and Restated Lease Agreement authorizes SEED, and/or its assignee or sublessee, with the prior consent of the County, to secure a loan against SEED's leasehold interest in the property, and/or the leasehold interest of any assignee or sublessee in the property.

Additional lease details are as follows:

- COMPANY PRINCIPALS: Rajiv Vinnakota, Co-Founder, CEO
Eric Adler, Co-Founder, Managing Director
- LEASE TERM: Twenty years, with two (2) additional 34-year renewal option periods.
- EFFECTIVE DATES: The Lease Agreement shall become effective 10 days after the date of its adoption by the Board, and terminate 20 years thereafter unless renewed by SEED pursuant to Section 4.01 of the Lease Agreement.
- RENTAL RATE: The rent due for the initial 20-year lease term is \$4,200,000 (\$13.77 per square foot). This is based upon the appraised value of the property. Rent due during the optional renewal periods shall be \$1.00 per year.
- Rent shall commence upon the earlier of either (a) 18 months from the commencement date of the Lease Agreement or (b) the date that SEED completes construction of the proposed improvements. After this 18-month abatement period, the rental payments are due in monthly installments of \$18,918.92. If SEED performs work including renovations, repairs, improvements, and/or certain maintenance tasks on the County's adjacent property (not leased to SEED) as in-kind services, such amount will be reduced from the rent in accordance with the terms of the Lease Agreement.
- LEASE CONDITIONS: SEED shall commence construction of the proposed improvements within 36 months and complete construction of the project no later than July 31, 2019. If completion of construction does not occur on time, it shall be an event of default. SEED is responsible for all construction costs as well as the payment of all utilities. SEED shall maintain and keep in good repair, condition, and appearance, at its sole cost and expense, the premises and any and all infrastructure (utility lines, pipes, and wiring) leading to or from the premises.
- SEED agrees to use the property only for the permitted use, which is the operation of a college preparatory school. However, should SEED's State funding be eliminated or reduced, through no fault of its own, SEED, with the County's approval, shall have the right to operate another not-for-profit social service function on the property. In this regard, the following substitute uses are pre-approved: (1) K-12 not-for-profit public school; (2) a not-for-profit higher education facility; or (3) a not-for-profit healthcare facility.

CANCELLATION PROVISION:

The County may terminate the lease agreement if SEED fails to satisfy project milestones and/or if the project is not completed within the first 36 months of the Lease Agreement.

Attachment



Russell Benford
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(3)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(3)
6-30-15

RESOLUTION NO. _____

RESOLUTION APPROVING, PURSUANT TO SECTION 125.38, FLORIDA STATUTES, TERMS OF AMENDED AND RESTATED LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE SEED FOUNDATION, INC., A WASHINGTON D.C. NOT-FOR-PROFIT CORPORATION, FOR DEVELOPABLE LAND LOCATED AT THE KENDALL COMPLEX, 11025 SW 84 STREET, TO BE USED AS A COLLEGE PREPARATORY BOARDING SCHOOL FOR AT-RISK, LOW-INCOME BOYS AND GIRLS, WITH A TOTAL GROSS RENTAL REVENUE TO THE COUNTY ESTIMATED TO BE \$4,200,068.00, FOR THE INITIAL 20 YEAR TERM OF THE LEASE AND THE TWO ADDITIONAL 34 YEAR RENEWAL OPTION PERIODS; AUTHORIZING THE COUNTY TO ACCEPT UP TO \$20,000.00 FROM THE SEED FOUNDATION, INC. FOR THE RELOCATION OF THE ARC OF SOUTH FLORIDA; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO REDUCE A PORTION OF THE RENT PAYMENT IN EXCHANGE FOR PERFORMANCE OF CERTAIN RENOVATIONS, REPAIRS, IMPROVEMENTS AND/OR MAINTENANCE TASKS TO THE COUNTY'S ADJACENT PROPERTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AGREEMENT AND TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE AN EXECUTED COPY OF THE LEASE AGREEMENT TO THE PROPERTY APPRAISER'S OFFICE

WHEREAS, The SEED Foundation, Inc. (SEED), is a Washington D.C. not-for-profit corporation, organized for the purpose of servicing the public; and

WHEREAS, SEED has applied to the County to lease certain County-owned property located at the Kendall Complex, located at 11025 SW 84 Street, Miami, Florida, to be used as a college preparatory boarding school for at-risk, low-income boys and girls and has represented

that it will use the property consistently with its mission, and in accordance with the lease agreement with the County, and all in support of the community interests and welfare purposes for which it is organized; and

WHEREAS, this Board through Resolution No. R-1066-13 authorized the County to enter into a lease agreement with SEED for the use of four buildings and the land surrounding the buildings at the Kendall Complex. The Board subsequently adopted Resolution No. R-289-14 which approved an amendment to that lease agreement authorizing the sublease of the premises to the Miami Boarding School, Inc. d/b/a SEED School of Miami, Inc.; and

WHEREAS, this Board finds that, consistent with Section 125.38, Florida Statutes, SEED does require the property for a use consistent with its mission and in support of the community interest and welfare purposes for which it is organized, that such lease for that use would promote community interest and welfare, and that the property is not otherwise needed for any County purposes; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated into this resolution and are approved.

Section 2. This Board hereby approves, pursuant to Section 125.38, Florida Statutes, the terms of the amended and restated lease agreement, in substantially the form attached hereto and incorporated herein by this reference, between Miami-Dade County and SEED, a not-for-profit Washington D.C. corporation, for developable land to be used as a college preparatory

boarding school for low income at-risk boys and girls, with a total gross rental revenue to the County estimated to be \$4,200,068.00 for the initial 20 year term of the lease and the additional two, 34 year renewal option periods.

Section 3. This Board authorizes the County Mayor or the County Mayor's designee to (1) receive up to \$20,000.00 from SEED for the relocation of ARC of South Florida from one building to another at the Kendall Complex and (2) to accept a reduction in a portion of the required rent payment in exchange for the performance of certain renovations, repairs, improvements and/or maintenance tasks to the County's adjacent property.

Section 4. This Board authorizes the County Mayor or the County Mayor's designee to execute the lease agreement for and on behalf of Miami-Dade County and to exercise any and all rights conferred therein including, but not limited to, the County's cancellation rights for breaches of the lease agreement pursuant to the terms of the lease agreement. This Board further directs the County Mayor or the County Mayor's designee to provide to the Property Appraiser's Office an executed copy of the lease agreement within 30 days of its execution.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

JRA

Juliette R. Antoine

THE SEED FOUNDATION
AMENDED AND RESTATED
LEASE AGREEMENT

The Seed Foundation
Amended and Restated Lease Agreement

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EXHIBITS AND SCHEDULES:

- Exhibit A Map of Premises
- Exhibit B Development Concept
- Exhibit B-1 Declaration of Restrictions
- Exhibit C Landlord’s Estoppel Certificate (Sample)
- Exhibit D Miami-Dade County Procedures Manual for Art in Public Places
- Schedule 4.01 - Confirmation of Commencement Date

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (hereinafter "Lease") is entered into and made effective on this _____ day of _____, 20____ by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord"), and The SEED Foundation, Inc., a Washington, D.C. not-for-profit organization (hereinafter "Tenant").

RECITALS

WHEREAS, the Landlord is the owner of certain real property located at 11025 S.W. 84 Street, in Unincorporated Miami-Dade County, Florida; and

WHEREAS, on or about December 17, 2013, the Landlord, by Resolution No.: R-1066-13, authorized the parties to enter into a lease agreement for that certain property located at 11025 S.W. 84 Street, in Unincorporated Miami-Dade County, Florida, which is more particularly described below; and

WHEREAS, on or about March 18, 2014, the Landlord, by Resolution No.: R-289-14, authorized the parties to enter into a first amendment to lease agreement for the aforementioned subject property, which amendment authorized the Tenant to sublet the subject property to the Miami Boarding School, Inc. (d/b/a the SEED School of Miami, Inc.); and

WHEREAS, the Landlord and Tenant are desirous of modifying, or otherwise amending and restating the aforementioned lease agreement between the parties for that certain property located at 11025 S.W. 84 Street, in Unincorporated Miami-Dade County, Florida, which is more particularly described below, along with adding additional property, and

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improvements, for the use and future development of such property consistent with the terms and conditions of this Lease; and

WHEREAS, the Landlord has determined that it does not have a need to utilize or otherwise occupy the property; and

WHEREAS, the Landlord, pursuant to Section 125.38, *Florida Statutes*, finds that the Tenant requires that certain property to benefit the public or community interest purposes, and the property is not otherwise needed for the Landlord's purposes, and that an amendment of the existing lease regarding the property would promote public or community interest and welfare; and

WHEREAS, the Landlord is willing, and has agreed to, pursuant to Section 125.38, of the *Florida Statutes*, to enter into a ground lease with the Tenant for a term of twenty (20) years, so long as the Tenant, at all times, not-for-profit entity, uses the property, makes it available solely for providing a public boarding school facility (as described herein below), and complies with all of the terms and conditions of this Lease in a timely manner, and

WHEREAS, the Board of County Commissioners, by Resolution, R- 15, has determined that it is in the best interest of the Landlord to lease that certain property located at 11025 S.W. 84 Street, in Unincorporated Miami-Dade County, Florida, as further described below, to the Tenant.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

WITNESSETH:

The Landlord, for and in consideration of the restrictions and covenants herein contained, hereby leases to Tenant, and Tenant hereby agrees to lease from Landlord, that certain property described below, and does so in accordance with the terms and conditions of this Lease, as described herein.

ARTICLE 1
INCORPORATION OF RECITALS

1.01 The parties hereto agree that the foregoing recitals are true and correct, and are incorporated herein by reference.

ARTICLE 2
DEFINITIONS

1. The words "Commencement of Construction" and "Commenced Construction" shall mean when used in connection with construction of the Project, the earlier of the filing of the notice of commencement under *Florida Statutes*, Section 713.13, or the visible start of work on the site of the Project, including on-site utility, excavation, or soil stabilization work. In order to meet the definition of "Commencement of Construction" or "Commenced Construction", such filing of the notice or visible start of work must occur after Tenant has received a building permit for the Project on which construction is proposed to commence.
2. The words "Completion of Construction" shall mean the date that the Tenant secures a temporary Certificate of Occupancy from the appropriate building department or agency of the jurisdiction in which the Premises is located.
3. The words "Development Concept" shall mean and refer to the overall site plan, building elevations, space plans, configuration of improvements and program summary as articulated for the Project, in draft, which, in its current version as of the Commencement Date is in illustrated "Exhibit B", and which is incorporated herein by reference.
4. The words "*Force Majeure*" shall mean when the Tenant and/or the Landlord shall be excused for the period of any delay and shall and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of this Lease when prevented from so doing by cause or causes beyond Tenant's or Landlord's control (including causes to the extent due to the action or inaction of the other party), excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental

regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of Tenant or Landlord. However, in order for the Tenant or Landlord to claim or otherwise take advantage of *force majeure*, such party must first notify the other party in writing of the event, and then secure from the other party a written acknowledgement that the other party recognizes the existence of an event of *force majeure*. Further, the Landlord or Tenant, as applicable, shall only be entitled to an extension of time, equal to the exact same period of the *force majeure* delay to complete its duty to perform under the terms and conditions of this Lease.

5. The word "Improvements" shall mean any and all buildings and/or other structures built on the Premises, and the parking areas (including any structured parking facility), hardscaping, landscaping, amenities, and all related infrastructure, installations, fixtures, equipment, utilities, site-work, and other improvements existing or to be developed upon the Premises.
6. The words "In-kind Services" shall mean certain work, including renovation, repairs, improvements, and/or maintenance, including, but not limited to, items such as landscaping, painting, asphaltting, striping, lighting, security, etc., as requested by the Landlord. The value of the In-kind Services shall be determined and agreed to, in writing, by the parties in advance of any work being performed by the Tenant. Any work performed by the Tenant prior to the determination of its value by and between the parties shall be deemed void, and therefore to have no value.
7. The words "Lending Institution" means any bank or trust company, mortgage bank, savings bank, credit union, national banking association, savings and loan association, building and loan association, insurance company, or other financial institution or governmental agency, and which customarily provides service or otherwise aids in the financing of mortgages on real property, and/or real property leaseholds, or any federal, state, or local governmental authority.
8. The words "Plans and Specifications" shall mean the plans and specifications for all the work in connection with the construction for the Project, as illustrated by what is shown in the Development Concept, and shall include any changes, additions or modifications thereof, provided the same are approved, if required, as provided for by the Landlord herein.
9. The word "Premises" means the land with any and all buildings, structures, and improvements thereon being leased by the Landlord to the Tenant for the development of the Project. The County-owned property is approximately seven (7) acres (approximately 304,920 square feet) and is located at the Kendall Complex, 11025 S.W. 84 Street (also having the address of: 8000 S.W. 107 Avenue), a portion thereof, in Unincorporated Miami-Dade County, Florida (a portion of Folio No.: 30-4031-000-0170). See map of the Premises, shown in

“Exhibit A”, and which is incorporated herein by this reference. The Premises is further described in Article 3, of this Lease.

10. The word “Project” shall mean the overall development on the Premises which will consists of the construction of a 24 hour college preparatory public boarding school with the primary purpose of providing a safe, structured, and predictable environment for students, substantially as it is depicted and described in the plans and Development Concept submitted by the Tenant. The Tenant has proposed a Development Concept on the Premises, as illustrated in the Development Concept (see “Exhibit B”). In addition to what is currently depicted in the Development Concept, after the Completion of Construction of the Project, the Tenant shall be permitted to construct additional buildings on the Premises, consistent with the Permitted Use, as described below, of this Lease.
11. The words “Public Boarding School” shall mean a residential school where pupils study and live during the school year with their fellow students and with teachers and administrators.

ARTICLE 3
DESCRIPTION OF PREMISES

3.01 Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, subject to the terms, covenants, conditions and provisions of this Lease.

3.02 Premises. The parcel of improved land involved in this matter, hereinafter known as the “Premises”, which is located in Unincorporated Miami-Dade County, Florida, is described as follows:

Folio Number:	Portion of 30-4031-000-0170
Property Address:	11025 S.W. 84 Street (a portion thereof) (also known as: 8000 S.W. 107 Avenue).

3.03 The Premises is graphically depicted on the attached map, marked “Exhibit A”, and it is incorporated herein by reference.

3.04 Landlord and Tenant agree that the square footage of the Premises is approximately seven (7) acres. And further that the square footage of the Premises is

only an approximation of size, as the Premises has not been duly measured by the Landlord. Moreover, the Tenant, has visited the Premises first-hand, and therefore is fully aware of the size of the Premises, and has determined that the Premises is of sufficient size for its intended purposes.

3.05 Notwithstanding anything to the contrary contained herein, the Premises has been inspected by the Tenant who accepts the Premises in its "as-is" and "where-is" condition, with any and all faults, and who understands and agrees that the Landlord does not offer any implied or expressed warranty as to the condition of the Premises and/or whether it is fit for any particular purpose.

ARTICLE 4
TERM

4.01 The term of this Lease is for a period of twenty (20) years plus two (2) additional thirty-four (34) year renewal option periods, as further described herein below. This Lease shall become effective ten (10) days after the date of its adoption by the Miami-Dade County Board of County Commissioners, unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by the Miami-Dade County Board of County Commissioners. The date on which this Lease becomes effective, as provided herein, and as first written above in this Lease, is called the "Commencement Date". The Commencement Date shall be memorialized and confirmed in a document named Confirmation of Commencement Date, which shall be executed by the Landlord in the form attached hereto as Schedule 4.01. Further, the Landlord and the Tenant hereby acknowledge and agree that this Lease shall terminate on _____, 20 ____ (hereinafter the "Expiration Date), which date is twenty (20) years after the Commencement Date. Further, the above mentioned Confirmation of Commencement Date document also references and confirms the Expiration Date.

Regarding the renewal option periods, the term of this Lease may be extended for two (2) separate renewal option periods of thirty-four (34) years each, so long as the Tenant is not in default of any of the terms and/or conditions of this Lease, beyond any applicable cure period. Tenant shall notify the Landlord in writing of its intent to renew this Lease at least six (6) months, and no more than twelve (12) months, prior to the Expiration Date. The two (2) additional renewal option periods will remain in full force and effect so long as Tenant complies with all of the terms and conditions herein.

4.02 The Tenant agrees that not only shall this Lease expire on the Expiration Date without the necessity of any notice from either the Landlord or the Tenant to terminate the same, but also Tenant hereby waives any notice to vacate or quit the Premises, and agrees that Landlord shall be entitled the benefit of all provisions of law respecting the summary recovery of possession of the Premises from a Tenant holding over to the same extent as if statutory notice had been given. Tenant hereby agrees that if it fails to surrender the Premises at the end of the term, or any renewal thereof, Tenant will be liable to Landlord for any and all damages which Landlord shall suffer by reason thereof, and Tenant will indemnify Landlord against all claims and demands made by any succeeding tenants and/or developers against Landlord founded upon delay by Landlord in delivering possession of the Premises to such succeeding tenant and/or developer.

4.03 If Tenant shall be in possession of the Premises after the Expiration Date, in the absence of any agreement extending the term hereof, the tenancy under this Lease shall become one of month-to-month, terminable by either party on thirty (30) days prior written notice. Such month-to-month tenancy shall be subject to all of the covenants, conditions, provisions, restrictions and obligations of this Lease and shall be subject to rent based upon the terms and conditions found in Article 5 below.

4.04 Limitation of the Term. As stated above in paragraph 4.01, the initial term of this Lease is for twenty (20) years. However, beginning on the Commencement Date, the Tenant shall have thirty-six (36) months to meet and comply with certain "milestones" which have been agreed upon by the parties. The milestones are found in Section 6.02 of this Lease. Should the Tenant fail to timely meet any or all of the milestones within thirty-six (36) months from the Commencement Date of this Lease, it shall be an event of default and this Lease shall automatically terminate and become void, and the Tenant shall immediately vacate the Premises. Should the Tenant timely meet and comply with all of the various milestones described in this Lease (see Section 6.02), then this Lease shall continue uninterrupted for the full term as stated in Section 4.01 of this Lease.

ARTICLE 5

RENT

5.01 Tenant covenants and agrees to pay to Landlord as rental for a term of twenty (20) years, commencing upon the earlier of eighteen (18) months from the Commencement Date of this Lease, or beginning on the date that the Tenant completes construction of the Project, Completion of Construction, and expiring on the Expiration Date, rent in the amount of Four Million Two Hundred Thousand (\$4,200,000.00) Dollars; which is due annually in the amount of Two Hundred Twenty-seven Thousand Twenty-six Dollars and Four Cents (\$227,027.04) per year, which is payable in installments, on a monthly basis, in the amount of Eighteen Thousand Nine Hundred Eighteen Dollars and Ninety-one Cents (\$18,918.92) per month, until the amount of Four Million Two Hundred Thousand (\$4,200,000.00) Dollars is paid in full (hereinafter "Rent"). Any Rent paid by Tenant prior to the Commencement Date of this Lease, shall be credited against the payment of the Rent, so long as such payment(s) are evidenced in writing by the Landlord, including a written letter by the Landlord to the Tenant

specifically detailing the amount of the credit that is to be applied toward the Rent). In addition to the Rent, the Tenant is also responsible for any and all applicable taxes, including, but not limited to sales tax, as "Additional Rent" payable and commencing on the Commencement Date, to Miami-Dade County, Community Action and Human Services Department, Office of Administration, Finance Services Division, 701 N.W. 1st Court, 10th Floor, Suite 10-109, Miami, Florida 33136, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein. The Tenant further agrees to pay any and all such Rent, and Additional Rent, without stipulation, restriction, condition, reservation, deduction, or set-off. Rent during the renewal period(s) shall be One (\$1.00) Dollar per year, which shall be payable, each year, in advance.

5.02 Landlord and Tenant agree that in exchange for the payment of some or all of the Rent, as described above, the Tenant shall be permitted to compensate the Landlord by performing In-kind Services for the benefit of the Landlord. The In-kind services shall consist of renovations, repairs, maintenance and/or improvements to the Landlord's property near the Premises (but not the Premises), performed by the Tenant. For any In-kind Services, which are to be credited as Rent (or against the Rent), must first be requested and approved by the Landlord, and the amount or value of the credit for the In-kind Services must be determined and agreed to by both parties in advance of the Tenant performing such In-kind Services. In-kind Services will be credited monthly towards rental fees upon proof of the completed work, as evidenced by written approval from the Director of the Community Action and Human Services Department. Receipts must be submitted by the Tenant, on a timely basis, for all expenses and/or expenditures for which credit against the Rent is sought. Should the In-kind Services exceed the monthly rental fee, a credit may be taken for future monthly Rent(s). Also, the parties hereby further acknowledge and agree that a value shall not be attributed to any volunteer

labor.

5.03 Should Tenant select to perform In-kind Services in lieu of paying said Rent, or any portion of the Rent, then Tenant must abide by all local, county, state and federal laws and regulations in performing such In-Kind Services; and the Tenant will be solely responsible for any required permits and licenses needed for such In-kind Services. The cost of permits, licenses, and supervision of the In-kind Services may be included in determining the value of the In-kind Services to Landlord, if first approved by the Landlord in writing.

5.04 Tenant also agrees that should it be in possession of the Premises after the Expiration Date, in the absence of any agreement extending the term hereof, that it shall, in addition to being liable to the Landlord for any and all damages as a result of such holdover, be obligated to pay the then market rent, meaning that rental rate that the Landlord could normally obtain if the Landlord elected to lease the Premises to a third party, which assessment contemplates an arms' length transaction (hereinafter "Market Rent"). Market Rent shall be determined by an independent appraiser, selected by the Landlord, who appraises the Premises in its then current condition (no reduction shall be given for any improvements made by the Tenant to the Premises.

5.05 The Tenant hereby acknowledges and agrees that if at any time during the term of this Lease, or any renewal or extension thereof, a tax, charge, levy, imposition, or excise is placed, or otherwise imposed, on the Premises, the Improvements, and/or the Tenant's leasehold interest in the Premises, then the Tenant shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition, or excise. Notwithstanding the foregoing, the Landlord hereby agrees that

during the term of this Lease, or any extension or renewal thereof, the Landlord shall not assess, levy, and/or otherwise impose a tax, charge, or other imposition strictly, or uniquely on the Premises, which is punitive in nature, and which is not similarly assessed on other similarly situated properties in the area, or general vicinity.

5.06 The Landlord and Tenant further agree that the Tenant, in accordance with Section 5.01 above, shall not begin to pay Rent under this Lease until the earlier of eighteen (18) months from the Commencement Date of this Lease, or beginning on the date that the Tenant completes construction of the Project, Completion of Construction. However, in accordance with Article 21 below, should the Tenant elect to cancel this Lease for a reason that is not associated with it being able to: (a) secure adequate funding, or (b) due to the environmental condition of the Premises, then the Tenant shall be obligated to immediately pay the Landlord the amount of the Rent that would have become due to the Landlord starting from the Commencement Date until the effective date of Tenant's cancellation of this Lease, in addition to any other fees, costs, and/or expenses that the Tenant is required to pay the Landlord and/or others under this Lease.

5.07 The Landlord and Tenant agree that the Tenant shall pay up to the amount of Twenty Thousand (\$20,000) Dollars, for the relocation of the organization ARC of South Florida, Inc. (or one of its agencies or affiliate entities), a third-party entity, for its move from Cottage 5 to Cottage 10 at the Kendall Complex, located at 11025 S.W. 84 Street. The agreed upon process for the payment for the relocation shall occur as follows: Upon the Landlord's presentation of an estimate to relocate ARC of South Florida to the Tenant, the Tenant shall immediately (within ten (10) calendar days) present a check to the Landlord for the estimated cost of the relocation, including, but not limited to, any necessary improvement(s) to Cottage 10. After the completion of the relocation, should any remaining sum of money be owed by the Tenant to the Landlord for the costs

associated with the relocation, up to the sum of Twenty Thousand (\$20,000) Dollars, then the Tenant shall, within thirty (30) calendar days, reimburse the Landlord for the additional funds expended to relocate the ARC of South Florida, Inc. to Cottage 10. Conversely, should, after the completion of the relocation, it be determined that the Tenant is entitled to a refund for money not spent from the initial payment by the Tenant in relocating the ARC of South Florida, Inc., then, within thirty (30) calendar days, the Landlord shall reimburse the Tenant such sum. Further, the Landlord and Tenant agree that the cost associated with relocating the ARC of South Florida, Inc. is an amount separate from (over and above) the Tenant's obligation to pay Rent and/or Additional Rent, under this Lease, and as a result, the Tenant is not entitled to any type of rent reduction, decrease, discount, and/or abatement of rent for paying for the relocation of the ARC of South Florida, Inc. to Cottage 10.

ARTICLE 6
PERMITTED USE OF PREMISES

6.01 Tenant shall only perform work, or make Improvements, on or to the Premises, or demolish existing buildings and improvements, that are consistent with the future construction of the Project public boarding school as defined in Article 2 ("Permitted Use"). Further, the Tenant hereby acknowledges and agrees that the Premises, once the construction of the Project is completed that the Premises shall only be utilized as a 24 hour college preparatory public boarding school, for boys and girls, starting at grade 6, and going through grade 12, and shall be for families whose income is below two hundred (200%) percent of the federal poverty guidelines. In addition, students and families must meet at least one (1) additional risk factor, including: a) having experience with the state child welfare system; b) living in public housing; c) being raised by a non-immediate family member; or d) having an immediate member of the family who has been incarcerated. The foregoing factors shall be included and

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incorporated into the term Permitted Use.

6.02 During the term of this Lease, the Tenant agrees that it shall perform the following "milestones", within the prescribed time periods, beginning upon the Commencement Date, and strictly for the thirty-six (36) month period following the anniversary of the Commencement Date, the Tenant shall perform the below listed milestones. Further, the Tenant shall deliver a notice to the Landlord indicating the date that it plans to commence performing the milestones, and deliver a second notice to the Landlord on the date that it has actually commenced performing the milestones.

A.) Within eighteen (18) months of the Commencement Date, the Tenant, at its sole cost and expense, shall provide the Landlord with all of the following:

- 1.) A copy of an environmental study of the Premises, performed by an environmental engineering firm, licensed to perform such work in the State of Florida; and
- 2.) A letter from Tenant's attorney, or from the appropriate jurisdiction planning and zoning agency, stating that the property is properly zoned for the proposed Project (the Landlord, solely in its capacity and limited role as a landlord, at Tenant's sole cost and expense, is willing to participate in any necessary zoning modification or variance during the period commencing on the Commencement Date and ending (18) months thereafter); and
- 3.) A copy of an executed development agreement, or joint venture partnership agreement, between the Tenant and the developer for the Project, along with satisfactory evidence that all such entities are in good standing; and
- 4.) A copy of preliminary, fifty (50%) percent, construction drawings, including elevations, which shall have been prepared by an architect licensed to perform such work in the State of Florida.

B.) Within twenty-four (24) months of the Commencement Date, the Tenant, at its sole cost and expense, shall provide the Landlord with all of the following:

- 1.) A copy of an estimated budget for the entire construction of the Project, including any and all Improvements, as reviewed and approved by an architect licensed to perform such work in the State of Florida; and

- 2.) A copy of the completed architectural drawings, along with completed building department applications and any permits that have been received; and
- 3.) A copy of the final soil boring test for compaction capabilities and soil condition, if applicable; and
- 4.) A copy of all environmental reports (Phase I and any Phase II Environmental Site Assessments) not submitted to the Landlord and any and all permits from the Landlord's Regulatory and Economic Resources (RER) department, if applicable; and
- 5.) A copy of the structural, mechanical and electrical drawings; and
- 6.) A copy of the final budget for the entire construction of the Project, as reviewed and approved by an architect licensed to perform such work in the State of Florida; and
- 7.) A copy of the fully executed contract for the General Contractor; and
- 8.) Evidence that the Tenant has commenced the pre-construction requirements of the Project, as described in Section 9.01 below.

6.03 Tenant agrees that it shall not begin actual construction of the Project, including any demolition, during the term of this Lease without receiving the Landlord's prior written permission, which permission will not unreasonably be withheld or delayed, and which shall be based on the Tenant having timely completed the requirements listed above in Section 6.02, and having secured a building permit (the Tenant is required to deliver a copy of such permit to the Landlord). The Tenant will also provide the Landlord with a letter certifying that it has timely completed all of the needed requirements to meet the terms and conditions of the milestones, and inform the Landlord of the date that it anticipates to break ground for the Project.

6.04 Tenant acknowledges and agrees that it will timely comply with all of the requirements in 6.02, and that failure to do so shall be an event of default. Further, should the Tenant be in default under this Lease with regard to failing to timely comply

with the above-described milestones, this Lease shall automatically terminate, and the Tenant shall not be responsible for the payment of any Rent beyond what was already paid, and/or due and owing to the Landlord, or any other obligation(s), or covenants under this Lease.

6.05 Tenant agrees that it shall commence construction of the Project within thirty-six (36) months of the Commencement Date, and Completion of Construction shall occur within eighteen (18) months from the date that Tenant commenced construction of the Project, and any and all Improvements, being completed no later than July 31, 2019. Further, the Tenant agrees that following the Completion of Construction for the Project, the Premises shall appear as it is depicted in the Development Concept (see "Exhibit B"). If Completion of Construction does not occur on time, it shall be an event of default under this Lease, and in addition to any other remedy available to the Landlord, at law or in equity, the Premises, shall revert to the Landlord by the termination of this Lease. The Tenant hereby acknowledges and agrees that Completion of Construction of the Project, as evidenced by a temporary Certificate of Occupancy, shall occur no later than July 31, 2019.

A.) The parties hereby acknowledge and agree that if the Tenant fails to timely complete construction of the entire Project in a timely manner, as described above, then all or portion of this Lease may be terminated by the Landlord, and in such instance, the Premises, or any portion thereof, as determined by the Landlord, shall be returned to the Landlord. If a platting or a waiver of plat is necessary, as determined by the Landlord, to return a portion of the Premises to the Landlord, then the Tenant shall secure such plat or waiver of plat at its sole cost and expense.

B.) The parties further hereby acknowledge and agree that from the date that

any portion of the Premises, which is no longer subject to this this Lease, as a result of the Landlord terminating all or a portion of this Lease, then the Rent for such property shall also terminate as of the date that the property is reacquired by the Landlord, so long as such property is both accessible and useable by the Landlord. If the property is unaccessible, or unuseable, by the Landlord, then, despite the fact that the Landlord reacquired a portion of the Premises, the Rent for such property shall remain the responsibility of the Tenant.

6.06 Tenant agrees that upon Completion of Construction of the Project, a public boarding school as described herein, the Tenant will continuously use the Premises for the Permitted Use, including related ancillary uses, and for no other purpose whatsoever. However, should Tenant's State funding be eliminated or cut, through no fault of its own, Tenant shall have the right to operate on the Premises a not-for-profit social service function, which operation shall be first approved by the County, which approval shall not be unreasonably denied or delayed. The following substituted uses are hereby approved in advance: K-12 not-for-profit public school; a not-for-profit higher education facility; or a not-for-profit healthcare facility.

6.07 Tenant agrees that no changes in the Permitted Use of the Premises is authorized without the expressed prior written permission of the Landlord. Further, as noted above, Tenant hereby expressly agrees that should the Tenant fail to timely comply with the requirements in Section 6.02 it shall be an event of default, and this Lease shall immediately and automatically terminate upon notice by the Landlord and thereafter this Lease shall become null and void, and any and all Improvements on or to the Premises shall become the sole property of the Landlord, without cost or expense to the Landlord.

6.08 Further, the Tenant hereby acknowledges and agrees that certain

limitations were previously placed upon the Landlord's Kendall Complex property, by a recorded Declaration of Restrictions, and that the Tenant has both received and read the Declaration of Restrictions, deems such limitations applicable, and hereby agrees to abide by such limitations, irrespective of whether or not the Premises, in the future, is the subject of a plat, or waiver of plat. The limitations in said Declaration of Restrictions are incorporated into the Lease, just as if they were set forth at length herein.

6.09 In connection with the proposed Project, the Landlord agrees to join in, as the Landlord, in any plat, waiver of plat, or other application(s), as necessary in order to assist the Tenant to develop and utilize the Premises in accordance with this Lease. Further, the Landlord, by its County Mayor, or County Mayor's designee, hereby agrees to reasonably cooperate with the Tenant, and to execute any documents that may be reasonably requested by the Tenant to accomplish securing approval for a plat or waiver or plat of the Premises. However, any and all costs and/or expenses associated with securing approval for any plat, waiver or plat, and/or any other method of separating the Premises from the Landlord's remaining property, shall be the sole responsibility of the Tenant.

6.10 Notwithstanding anything to the contrary in this Lease, as part of the Landlord's right to terminate this Lease, and reacquire all or a portion of the Premises, the Landlord shall have the right to plat, or secure a waiver of plat of the Premises, or any portion thereof, and may do so in any configuration, or arrangement that it deems necessary. However, notwithstanding the foregoing, the Landlord shall not have the right to reacquire any portion of the Premises in which the Tenant has already properly encumbered, Commenced Construction, or where Completion of Construction has occurred. This section shall survive the expiration or early termination of this Lease.

ARTICLE 7
CONDITION OF PREMISES

7.01 Landlord and Tenant agree that the Tenant shall be solely responsible for obtaining, securing and/or maintaining any and all permits and licenses, including, but not limited to, construction or building permit(s) and/or license(s). Tenant agrees to be solely responsible for the cost to obtain all required or desired permit(s) and/or license(s).

7.02 Tenant agrees that it is solely responsible for securing any necessary land use approvals, zoning regulations, restrictions, rules, laws and ordinances that may be necessary in order for the Tenant to construct and/or maintain the Project.

7.03 Tenant, at its sole cost and expenses, shall familiarize itself with any and all easements or other encumbrances on or about the Premises and shall determine if any such easements or other encumbrances will or will not interfere with the Tenant's planned use of the Premises as a public boarding school. Tenant agrees that if any easements and/or other encumbrances exist on the Premises, it shall be the Tenant's responsibility to cause the removal of such easements and other encumbrances, or to design the building(s) in such a manner as to not disturb or interfere with the easements and/or other encumbrances.

7.04 The parties hereby expressly acknowledge and agree that Tenant shall not occupy or otherwise utilize any portion of the Premises prior to obtaining all necessary permits and/or licenses for the occupancy or operation of a public boarding school. And, if for any reason Tenant loses any necessary permit or license for any reason whatsoever, Tenant shall refrain from such use, occupancy, and/or operation until the Tenant has re-secured, and has in hand, the appropriate permit(s) and/or license(s) which authorize and warrant the use, occupancy, and/or operation of the Premises as

contemplated under this Lease. Further, Tenant is fully responsible for complying with, at its sole cost and expense, any and all building and fire codes.

7.05 Tenant acknowledges and agrees that the Premises currently consists of five (5) buildings, each being comprised of approximately 5,000 square feet of space together with approximately 392,040 square feet of land, and hereby accepts full responsibility to undertake any and all demolition required for the construction of a facility or facilities consistent with the proposed use, and conduct environmental assessments on or about the Premises, and if necessary, clean-up (as determined by any and all federal, state and local laws and regulations) the Premises, at Tenant's sole cost and expense, to a level or amount that will allow for the development of the Premises, including the construction of any and all structure(s) or improvements that will comprise the public boarding school. Further, throughout the term of this Lease, the Tenant shall also be solely responsible for any and all repair, maintenance, and improvement to the Premises, and all Improvements, including, but not limited to, complying with the Americans with Disabilities Act (and/or any other law, rule, or regulation), as well as any 40-Year Recertification requirement that might be imposed at any time, also addressing any groundwater or soil conditions, structural and/or foundation problems, and air and/or noise quality.

7.06 The Landlord hereby acknowledges and agrees that the Tenant, and any and all of its employees, invitees, agents, and contractors shall be permitted, or otherwise authorized, to have both ingress and egress access over and upon any roadway, street, and/or path owned by the Landlord, leading to or from the Premises, and to and from Southwest 84th Street, as well as to and from Southwest 112th Avenue.

7.07 The Tenant agrees that commencing upon the seventy-fifth (75)

anniversary of this Lease, the Tenant will begin to report annually to the Landlord the condition of the Premises, including, but not limited to the condition of any and all Improvements and structures on the Premises. Such report to the Landlord shall describe any maintenance issues which cost more than Ten Thousand (\$10,000.00) Dollars to repair, renovate, or otherwise restore, as well as any on-going maintenance issues that are difficult to remedy, and any structural issues to any of the buildings or structures. Any failure by the Tenant to timely and accurately report the condition of the Premises, as described herein above, to the Landlord, the Landlord shall first send a notice to the Tenant reminding the Tenant of its ongoing duty and obligation to inform the Landlord of the condition of the Premises, and the building and structures thereon, and should the Tenant continue to fail to timely and/or properly inform the Landlord, then it shall be an event of default under this Lease.

ARTICLE 8
TAXES AND UTILITIES

8.01 During the term of this Lease, consistent with Sections 5.01 and 5.03 above, the Tenant shall be solely responsible for any tax, charge, capital levy, imposition, or excise that is assessed or otherwise imposed on the Premises, the leasehold interest, any Improvements, and/or the Rent. The Tenant shall be responsible for and shall pay, before delinquency, all municipal, county, or state taxes assessed against any occupancy interest or personal property, of any kind or nature, owned by or placed in, upon, or about the Premises. Further, the Tenant hereby covenants and agrees to pay, without notice or demand and without set-off, abatement, suspension or deduction, any and all taxes, payments in lieu of taxes, betterment assessments, water, electric, sewer, telephone and other utility charges for the Premises and/or any structures and/or Improvements thereon.

Tenant further covenants and agrees to pay without notice or demand and without set-off, abatement, suspension or deduction, all other costs, general and special, ordinary and extraordinary, foreseen and unforeseen, which are due and payable during the term of this Lease, at any time imposed or levied against the Premises and/or any structures and/or Improvements thereon. All such payments shall be made no less than five (5) calendar days prior to the last date on which the same may become delinquent and be paid without penalty.

8.02 Tenant will furnish to Landlord, once per year, concurrently with evidence of its not-for-profit status, proof of payment of all items referred to in paragraph 8.01, which are payable by Tenant, including, but not limited to the payment of any taxes or payments in lieu thereof.

8.03 If Tenant shall elect to contest the payment of any taxes, Tenant may make such payment under protest, or if postponement of such payment will not jeopardize the Landlord's title or interest in or to the Premises, or subject Landlord to the risk of any civil liability or penalty as determined in the sole and absolute discretion of the Landlord, Tenant may postpone the same to contest the amount of such taxes, but only if such postponement is done in accordance with the then-applicable laws, rules and regulations. If Landlord then so requires, Tenant shall secure the full amount of the taxes levied and the interest and penalties thereon and the costs of the proceedings or suit on the determination of whether the amount of the taxes is appropriate, by causing to be delivered to the Landlord in the form of a bond or other security, in the form satisfactory to Landlord, which amount Landlord shall hold in its general account during the pendency of the proceedings. Landlord shall return any amounts remaining, without interest, within thirty (30) days of the conclusion of the proceedings, that Landlord did not use to pay the taxes, interest or penalty. Tenant agrees to indemnify, defend and hold

Landlord harmless from and against any and all costs and expenses incurred on account of Tenant's protest and participation in such proceedings and/or as a result of Tenant's failure to timely pay taxes and other related charges with respect to the Premises and/or any structures and/or improvements thereon. Tenant shall promptly furnish the Landlord with a copy of any notice of all events and actions as they relate to the proceedings and/or suits.

ARTICLE 9
CONSTRUCTION OF STRUCTURES AND IMPROVEMENTS

9.01 Tenant, at its sole cost and expense, shall, at a minimum, perform any and/or all of the pre-construction work necessary to construct the Project. The construction of the Project shall incorporate sustainable development building measures (green building practices) into the planning, design, construction, renovation and maintenance of the building and any and all improvements, all in accordance with the Landlord's Sustainable Buildings Program, as further described below in Section 9.02. The construction of the Project shall commence no later than thirty-six (36) months from the Commencement Date. Commencement of the Project is hereby agreed upon and determined to be the cumulative of: 1.) issuance of the building permit(s) for the Project; 2.) the commitment for funding for the entire construction of the Project; 3.) a general contractor that is retained and ready to begin construction; 4.) filing of a notice of commencement under Section 713.13, *Florida Statutes*; and 5.) the visible start of work (i.e. actual construction of the Project), including the installation of on-site utilities, excavation, soil stabilization work, and/or the construction of the actual building (note, simply pouring of the foundation will not serve as commencing construction). Further, the Tenant specifically agrees that the construction of the Project will occur over an eighteen (18) month period, with the Project being completed by July 31, 2019, as evidenced by a temporary Certificate of Occupancy, subject to delay due to *force*

majeure. Failure to timely construct the Project and/or the necessary Improvements to the Premises, as reasonably determined by the Landlord, all in accordance with the terms and conditions of this Lease, shall result in an event of default of this Lease, and the Premises reverting to the Landlord, along with any and all structure(s), building(s), and/or improvements thereto.

9.02 The Tenant acknowledges and agrees that it is required to comply with the Landlord's rules, regulations, and ordinances pertaining to constructing a sustainable (or "green") building(s) on the Premises that conserves the community's natural resources, saves taxpayer dollars, reduces operating expenses, and creates a healthier built environment for employees, tenants, and visitors on and about the Premises. As a direct result of the Tenant's commitment to construct a sustainable building(s), the Tenant further agrees to the following:

A.) The Tenant is required, at its sole cost and expense, to construct to at least a Silver certification rating from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED), and the construction of the building(s) is also in compliance with any and all of the "green building standards" required by the Landlord for new construction projects, in addition to any and all Florida building code restrictions and/or requirements. The Tenant acknowledges and agrees that the LEED Silver certification or designation means that new construction shall be constructed to meet certain specifications as outlined by the U.S. Green Building Council, which will include various "green" or environmentally responsible features including, but not limited to, the preparation of the Premises, as well as the design and construction of the building and/or other improvements; and all shall be reviewed, examined, approved, and certified by a neutral and independent third-party who is certified or approved by the U.S. Green Building Council, and who also regularly certifies such structures as meeting certain

LEED standards and/or requirements. The Tenant agrees to regularly provide the Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the construction of the Project, to establish that the Tenant is in fact proceeding with the construction in a manner to ensure that the LEED Silver designation can be secured from the U.S. Green Building Council. The Tenant also hereby acknowledges and agrees that it must incorporate high performance building concepts and technologies in order to enhance the overall design and construction of the Project, while simultaneously making any and all other Improvements and the remaining public spaces, if any environmentally responsible.

B.) The Tenant hereby acknowledges and agrees that the LEED Silver certification or designation is a description or label designed to establish the level of energy efficiency and sustainability for all improvements that will be constructed on the Premises, and such energy efficiency should substantially improve the “normal” or “regular” energy efficiency and indoor air quality for the Project. Beyond these environmentally responsible steps, the Tenant specifically agrees to consider additional areas or means to improve and/or protect the environment with regard to the construction project, and inform the Landlord of any and all such additional methods or ways, if any, that the Tenant will utilize “green building standards” in the design and construction of the Project, in an effort to achieve the important goals of creating a healthy place to live and work as well as an environmentally responsible development in the community.

C.) Substitution of Standard: The Landlord acknowledges and agrees that the requirement for the Tenant to secure the LEED Silver certification or designation may be exempted or modified due to special circumstances of the construction project and/or nature of the Project. As a result the Landlord has determined that with regard to the

Project, the Tenant may be permitted to utilize a different standard other than the U.S. Green Building Council. However any substitute standard must first be approved, which approval will not unreasonably be withheld, in writing by the Landlord's sustainability manager. Further, in utilizing any other green building standard, the Tenant is required to comply with the requirements to reach, at minimum, the Silver certification or designation level for the selected standard, or the standard most similar to LEED Silver, and to regularly provide the Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the construction the Project, to establish that the Tenant is in fact proceeding with the construction in a manner to ensure that the appropriate designation can be secured from the selected green building standard. The Tenant also hereby acknowledges and agrees that it must incorporate high performance building concepts and technologies in order to enhance the overall design and construction of the Project, while simultaneously making any and all other Improvements and the remaining public spaces environmentally responsible.

9.03 Tenant understands and agrees that it is solely responsible to procure any and all construction and related services in strict compliance with any and all local laws, rules and/or requirements.

9.04 Prior to the commencement of any construction, the Tenant must deliver all plans, specifications and scheduling for such construction, fencing, landscaping and/or other Improvements, which will all be commenced and completed at Tenant's sole cost and expense, to the Landlord, and specifically to the Director of the Internal Services Department, and the Director of the Community Action and Human Services Department for written approval at least ninety (90) days before the commencement of any such work.

9.05 Upon the Landlord's initial receipt of each of the plans and specifications, as described above in Section 9.04, the Landlord shall review the same, reasonably and in good faith, and shall, within fifteen (15) calendar days after receipt thereof, advise the Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of disapproval, Tenant shall, within thirty (30) calendar days after the date Tenant receives such disapproval, make those changes necessary to meet the Landlord's stated grounds for disapproval. Upon the Landlord's receipt of the revised plans and specifications showing the changes requested by the Landlord, the Landlord shall review the same, reasonably and in good faith, and shall, within fifteen (15) calendar days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval.

(a) As an alternative to revising the plans and specifications upon receipt of the Landlord's disapproval of the initial submission, the Tenant may request reconsideration of such comments, by first describing in detail why it reasonably believes that the plans and specifications should not be changed or modified, in which case, within thirty (30) calendar days of such request for reconsideration, the Landlord shall again advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. If the Landlord continues to disapprove after reconsideration, Tenant shall resubmit revised plans and specifications to the Landlord within thirty (30) calendar days after the date Tenant receives such disapproval. Any resubmission shall be subject to review and approval by the Landlord, in accordance with the procedure hereinabove provided for an original submission, until the same shall receive final approval by the Landlord. The Landlord and the Tenant

shall in good faith attempt to resolve any disputes concerning the plans and specifications in an expeditious manner. If the Landlord shall have approved any aspect of the plans and specifications in an earlier plan submission, and no portion of the revised plans and specifications has affected the earlier-approved aspect, absent extenuating circumstances, the Landlord shall not have the right to disapprove that which it approved earlier, unless it is determined by the Landlord that such plans and specifications fails to comply with applicable law(s) and/or ordinance(s).

(b) Following completion of the plans and specifications approval process, as described herein above, the Landlord's approved plans and specifications for the Project, or any addition thereto, shall be the construction plans for the Project. The Landlord's approval shall be in writing and each party shall have a set of construction plans signed by all parties as approved. In the event any material change occurs after approval of the construction plans for the Project, including any addition thereto, the Tenant must then resubmit the changed portion of the construction plans to the Landlord for the Landlord's reasonable approval (irrespective of whether the change is required by another Miami-Dade County department as part of the permitting process).

9.06 Tenant shall cause any and all construction to be performed competently and in a good and workmanlike manner by duly qualified and licensed persons and/or entities, using materials as specified by the plans, and with as little interference as practicable to the affairs of nearby residences and/or businesses.

9.07 Tenant shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by Tenant or its contractor on or about the Premises, and shall obtain and deliver to Landlord "releases" or waivers of liens from all

parties doing work on or about the Premises, along with an affidavit from Tenant stating that all bills have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work performed on the Premises. The Tenant, as described below in Section 9.13, is further required to secure a payment and a separate performance bond, in accordance with Section 255.05, *Florida Statutes*, to guarantee the timely payment of any and all laborers and materialmen, as well as the timely and proper construction of the Project. Such payment and performance bond will be delivered to Landlord prior to commencement of construction. The amount of such bonds shall be equal to the construction costs of the Improvements.

9.08 Tenant acknowledges and agrees that the Landlord, in its capacity as Landlord under this Lease, currently has no obligation and in the future shall have no obligation, financial, regulatory or otherwise, for any activities necessary or otherwise related to the pre-construction and/or construction of any structure(s) and/or Improvements on or about the Premises during the term of this Lease.

9.09 If Tenant's construction activities or other actions relative to the Premises result in the introduction of hazardous materials or contamination of the soil and/or groundwater, then the Tenant agrees to: (1) immediately notify the Landlord of any contamination, claim of contamination or damage; (2) after consultation and with the approval of the Landlord, to clean up the contamination in full compliance with all applicable statutes, regulations and standards, at the Tenant's sole cost and expense; and (3) to indemnify, defend and hold the Landlord harmless from and against any claim, suits, causes of action, liability, obligations, costs and/or fees, including any and all attorneys' fees arising from or connected with such contamination, claim of contamination or damage.

9.10 Except as set forth in Section 9.12 hereof, all leasehold improvements made by Tenant, including, but not limited to anything erected or installed on or about the Premises at any time during the term of this Lease, whether by or on behalf of the Tenant or by or on behalf of Landlord, shall not be removed from the Premises at any time, unless removal is consented to in advance, in writing, by Landlord; and at the expiration of this Lease (either on the Expiration Date or upon such earlier termination or cancellation as provided for in this Lease), all such leasehold improvements shall be deemed to be part of the Premises, and shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in the Landlord without payment of any kind or nature to Tenant.

9.11 Subject to the provisions of Section 9.12 of this Lease, Tenant's introduction of any supplies and/or equipment to the Premises, which personal property can be removed without damage to the Premises, shall remain the Tenant's property and may be removed from the Premises upon the expiration of this Lease.

9.12 Landlord and Tenant agree that in an effort to protect the Landlord in the event Tenant defaults hereunder, Tenant hereby grants to Landlord a security interest in all of the Tenant's personal property, including, but not limited to, all goods, equipment, and supplies belonging to the Tenant which are placed on or about the Premises during the term. Said security interest shall secure all amounts to be paid by Tenant to Landlord hereunder, including, but not limited to, the cost for maintenance and repairs to the Premises, and attorneys' fees, expert witness fees and court costs. However, notwithstanding the foregoing, and consistent with Section 30.08 below, the Landlord hereby agrees that should any of the Tenant's personal property, and/or trade fixtures be in fact the personal property of the State of Florida, or Miami-Dade County School Board, or a collateral for a loan, then the Landlord's rights to such personal property

and/or trade fixtures shall be subordinate to the rights and interest of the other governmental authorities and/or the Lending Institution. Further, in the event that a governmental authority and/or a Lending Institution requires or requests a evidence of the Landlord's waiver, in accordance with this paragraph, then the Landlord, by its County Mayor, or County Mayor's designee, will provide such evidence, consisting of a letter to such governmental authority and/or a Lending Institution.

9.13 Prior to commencing any construction and/or repairs to the Premises, or any structure or improvements on or about the Premises, Tenant shall obtain and deliver to the Landlord, at its sole cost and expense, both a payment bond and performance bond, or such other alternate form of security, any or all of which meets the requirements of Section 255.05, *Florida Statutes*, as set forth below, not less than ten (10) days prior to the anticipated commencement date of the construction and/or repairs. Said payment and performance bonds shall be in favor of the Landlord, the form of such bonds shall be as provided by Section 255.05, *Florida Statutes*, and each shall be in the amount of the entire cost of the construction of the Project, or any addition thereto, or in instances of repair, the total cost associated with the repair project regardless of the source of funding. The payment and performance bonds shall name Landlord as an obligee on the multiple obligee rider attached to the payment and performance bond, and shall be issued by a surety insurer authorized to do business in the State of Florida. The bonds shall be subject to review and approval by Miami-Dade County, Internal Services Department, Risk Management Division, as well as to the Community Action and Human Services Department. The Tenant shall be responsible for recording the bonds in the public records of Miami-Dade County and providing notice to subcontractors and suppliers, as required by Section 255.05 of the *Florida Statutes*. Said payment and performance bonds shall be maintained in full force and effect for the duration of any construction and/or repair project. However, the foregoing requirement of securing a payment and

performance bonds shall not be required when such contract for any repair work is estimated, in accordance with generally accepted cost-accounting principles, to have a cost of less than \$200,000.

ARTICLE 10
MAINTENANCE AND REPAIR

10.01 Tenant agrees to maintain and keep in good repair, condition, and appearance, during the term of this Lease, or any extension or renewal thereof, at its sole cost and expense, the Premises, and any and all infrastructure (utility lines, pipes, wiring) leading to or from the Premises, as well as any and all vegetation, including, but not limited to, all grass, hedges, trees, and plants which are, now or in the future, on the Premises. However, in accordance with the Project, Tenant may demolish the existing buildings to make way for the Improvements associated with the Project.

10.02 Tenant, at its expense, shall maintain and keep the Premises, including, but not limited to, all current and future parking areas, pathways, and/or walkways adjacent to or leading to or from any structure or improvement which may be constructed on the Premises, and any and all sidewalks on the Premises, free from debris.

10.03 With regard to the general maintenance and occupancy of the Premises, Tenant will, at its expense: (a) maintain the Premises in a clean, orderly and safe condition and free of rodents, vermin and other pests; (b) keep any garbage, trash, rubbish and/or other refuse in safe containers that do not encourage the existence of vermin; (c) cause to have such garbage, trash, rubbish and refuse removed on a daily, weekly, or as needed basis to ensure cleanliness; (d) comply with all laws, ordinances, rules and regulations of governmental authorities regarding the removal of garbage, trash, rubbish and refuse from the Premises; (e) keep all pre-construction, and construction

activities, and/or mechanical equipment apparatus free of vibration and noise which may be transmitted beyond the Premises and/or which could disturb adjacent landowners or occupiers; (f) prevent any objectionable odors emanating from or being dispelled from the Premises; (g) comply with and observe all rules and regulations established by the Landlord from time to time which relates to the Tenant's occupancy on the Premises (as such rules and regulations are reasonably applicable to all of the Landlord tenants at the Kendall Complex); and (h) conduct its operation in all respects in a dignified manner in accordance with the high standards of other similar not-for-profit organizations. Further, should the Tenant fail to properly maintain the Premises, the Landlord may elect to clean, remove any trash or rubbish, or otherwise maintain the Premises. Should the Landlord elect to clean, remove any trash or rubbish or otherwise maintain the Premises, the Landlord shall invoice the Tenant the amount of the cost associated with such maintenance, which cost shall be deemed as Rent under this Lease.

10.04 Any damage or injury sustained by any person due to the work of the Tenant or any of its agents or contractors, or due to the maintenance of any mechanical equipment, and/or because of the operation or existence of any mechanical, electrical, plumbing or other equipment of Tenant, or the installation of such, shall be the sole responsibility of Tenant, and Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, actions, causes of action, damages and liability in connection therewith, including, but not limited to reasonable attorneys' fees, other professional fees, and any other cost which Landlord may incur.

ARTICLE 11

DESTRUCTION OF STRUCTURES AND IMPROVEMENTS

11.01 Tenant shall be responsible for and shall repair any and all damage caused to the Premises and/or any structure(s) and/or Improvements on or about the Premises, regardless of the source or cause of such damage, starting from the

Commencement Date. Further, the Tenant shall immediately notify the Landlord, in writing, upon discovering any damage to the Premises and/or any structure or Improvement on or about the Premises. Tenant is responsible for maintaining, replacing and/or repairing any damaged real property, personal property, Improvements and/or any structure. However, in accordance with the Project, Tenant may demolish the existing buildings to make way for the Improvements associated with the Project.

11.02 After Completion of Construction, in the event the Premises, including the building and structures thereon, should be completely destroyed or so damaged by fire, windstorm, or other casualty to the extent that the Premises is rendered unfit for the intended purpose of Tenant, the Tenant may cancel this Lease but only after entering into an agreement with the Landlord regarding the cost to immediately repair any damage and/or remove any trash and/or debris, and resettling any and all students in the building(s). Tenant hereby agrees that prior to cancelling this Lease; the Tenant shall be solely responsible for permanently relocating any and all students/residents/occupants from any and all buildings and structures on the Premises. If the Premises is partially damaged, but the Premises is not rendered completely unusable for the purposes of this Lease, the same shall be immediately repaired by Tenant from proceeds of the insurance coverage and/or at its own cost and expense, including being solely responsible for temporarily relocating or moving any and all students/residents/occupants from any and all buildings and structures on the Premises. If the damage to the Premises shall be so extensive as to render it unusable for the purposes intended, but capable of being repaired within one hundred eighty (180) days, the damage shall be repaired with due diligence by Tenant from the proceeds of the insurance coverage policy and/or at its own cost and expense, including the costs associated with temporarily relocating or moving any and all students of the building(s). In the event that the Premises and/or nearby building(s) or structure(s) or Improvements is damaged or destroyed, after Completion of Construction

of the entire Project, due to Tenant's negligence, or the negligence of Tenant's employee(s), vendor(s), agent(s), and/or contractor(s), the Tenant shall be solely liable and responsible to repair and/or compensate the Landlord for such damage or loss, and for any cost or expense associated with relocating, both temporarily and permanently, any and all students/residents/occupants of the building(s), unless this Lease is terminated, then in such event, in addition to any relocation, the Tenant shall remove any and all debris, rubble, and remaining building(s), to the Landlord's satisfaction, and restore the Premises to its original condition, and repair any personal property belonging to the landlord, and any different person or entity (third-party). Notwithstanding the foregoing, should the Premises, including any building(s) or structure(s) thereon be damaged through no fault of the Tenant, or any of the Tenant's employees, vendor(s), agent(s), and/or contractor(s), the Tenant may shall be permitted to seek a reduction in the requirement repair or rebuild any or all of the damage building(s) or structure(s), and such shall be negotiated between the Tenant and the Landlord, but in no event shall the Tenant be permitted to keep or otherwise retain the proceeds from any insurance policy for its own personal use.

ARTICLE 12
ASSIGNMENT AND SUBLEASE

12.01 Without the written consent of Landlord first obtained in each case, through its Board of County Commissioners, Tenant shall not assign, sublet, transfer, mortgage, pledge, or dispose of this Lease or the term hereof, which consent may be withheld in Landlord's absolute discretion (except for Tenant's rights to sublease, or mortgage the Premises consistent with Article 30 herein). This prohibition includes, but is not limited to: (a) any subletting or assignment which would occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure; and (b) an assignment of subletting to or by a receiver or trustee in

any federal or state action, bankruptcy, insolvency, or other proceedings. Except as otherwise provided in Article 30 below, in no event shall Tenant be permitted to assign or sublet the Premises to any entity, for any purpose whatsoever, that fails to meet the requirements of Section 125.38, *Florida Statutes*. However, Tenant may sub-lease faculty apartments, gym and auditorium without further Landlord approval.

12.02 The Landlord, having previously consented to allowing the Tenant to sublease the Premises to Miami Boarding School, Inc. (d/b/a the SEED School of Miami, Inc.), hereby expressly renews and continues such consent, authorizing the Tenant to sublease the Premises to the Miami Boarding School, Inc. (d/b/a the SEED School of Miami, Inc.), provided that the Miami Boarding School is qualified as a not-for-profit entity under state law.

12.03 The Landlord hereby further expressly agrees to allow the Tenant to sublease the Premises to the SEED School of Miami Foundation, Inc., provided that the SEED School of Miami Foundation, Inc. is a not-for-profit entity under state law, and operates the Premises consistent with the terms and conditions of this Lease.

ARTICLE 13
NO LIABILITY FOR PERSONAL PROPERTY

13.01 All personal property placed on or moved in the Premises shall be at the sole risk of Tenant or the owner thereof. Landlord shall not be liable to Tenant or any owner of such personal property for any damage to said personal property unless solely caused by or due to the gross negligence of Landlord, Landlord's agents or employees, subject to all limitations of *Florida Statutes*, Section 768.28.

ARTICLE 14
LANDLORD NOT RESPONSIBLE FOR ACTS OF OTHERS

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14.01 Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming onto the Premises, including but not limited to invitees, trespassers, and/or licensees for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, for themselves and/or their personal property, from any actions or activity by such person(s), including, but not limited to, such actions or activity which is the direct or indirect cause of any lack of security, insufficient safety measures, failure to provide adequate or sufficient warnings, precautions, and/or inadequate protection to the Premises, the Tenant, or anyone claiming by, through or under the Tenant. To the maximum extent permitted by law, the Tenant agrees to use and occupy the Premises at Tenant's own risk. Tenant shall secure, maintain and utilize security personnel, at its sole cost and expense, as it deems necessary, to protect the Tenant, its guests, licensees, any and all students, and/or the Premises.

ARTICLE 15
LANDLORD'S RIGHT OF ENTRY

15.01 Landlord hereby acknowledges and agrees that the Tenant has and must maintain a policy relating to visitors onto the Premises, and/or into any buildings and/or structures on the Premises, and such policy may include verification of identification. As a result, the Landlord's employees and/or agents, after Completion of Construction, may be required to undergo a brief verification of their identity prior to entering into any building or structure on the Premises. Landlord, or any of its employees and/or agents shall have the right to enter the Premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior written notice, during which time verification of identity shall be performed by the Tenant, to examine the Premises, including any building or structure thereon, or to make such repairs, additions,

or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Said right of entry shall exist for the routine purpose of ensuring that the Premises is safe, and that the Tenant's operations are constant with the terms and conditions of this Lease. Notwithstanding the foregoing, the Landlord, without prior notice or warning to the Tenant, shall always be permitted to enter the Premises, including any buildings or structures thereon, to make such safe in the event of an emergency, as solely determined by the Landlord.

15.02 Upon completion of the Project, the parties hereby acknowledge and agree that the Landlord, specifically including (but not limited to) any duly authorized employee of the Community Action and Human Services Department, and/or any employee from the Miami-Dade County Department of Audit and Management Services, or either of the departments' duly authorized agents, shall have the right and privilege to enter the Premises, with forty-eight (48) hours' prior written notice, at any time during the normal operating hours over the course of the calendar school year, to inspect the books and records of the Tenant regarding the rental of any residential unit(s), and to otherwise inspect the use of the Premises, and any Improvements thereon, to determine whether or not the restrictions regarding the Project are being fully complied with by the Tenant, and/or its successors or assigns. Further, at the Landlord's discretion, the Landlord may require the Tenant to bring or deliver any of the aforementioned books and records to the Landlord's office location, so that the Landlord may conduct its inspection, review, or audit at its offices.

ARTICLE 16
PEACEFUL POSSESSION

16.01 Subject to the terms, conditions, and covenants of this Lease, Landlord covenants and agrees that Tenant shall and may peaceably have, hold, and enjoy the

Premises without hindrance or molestation by Landlord.

ARTICLE 17
SURRENDER OF PREMISES

17.01 Tenant agrees to surrender to Landlord, upon the Expiration Date, or any extension or renewal thereof, or any early termination, or cancellation of this Lease, the Premises in as good condition as the Premises was at the beginning of the term of this Lease, ordinary wear and tear excepted. In addition, upon the Expiration Date, or any extension thereof, or upon any early termination or cancellation of this Lease, subject to the provisions of Section 9.12 hereof, any structures and/or Improvements constructed on the Premises shall remain on the Premises, and shall become the sole property of the Landlord, without any payment or obligation to Tenant.

ARTICLE 18
INDEMNIFICATION AND HOLD HARMLESS

18.01 Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the negligent performance of this Lease by the Tenant or its employees, agents, servants, partners, principals, or subcontractors, except to the extent relating to or arising out of the gross negligence or willful misconduct of Landlord or its employees, agents, servants, or principals. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Landlord, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required

by this Lease, or otherwise provided or secured by Tenant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 19
LIABILITY FOR DAMAGE OR INJURY

19.01 Landlord shall not be liable for any damage or injury which may be sustained by any party or person on the Premises other than the damage or injury caused solely by the gross negligence of Landlord, its officers, employees, or agents, subject to the limitations of *Florida Statutes*, Section 768.28.

ARTICLE 20
SUCCESSORS IN INTEREST

20.01 It is hereby acknowledged and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE 21
TERMINATION

21.01 **TERMINATION BY LANDLORD:** The occurrence of any of the following shall cause this Lease to be terminated by the Landlord upon the terms and conditions also set forth below:

A. Automatic Termination:

- 1) Institution of proceedings in voluntary bankruptcy by the Tenant.
- 2) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of ninety (90) days or more.
- 3) Assignment of Lease by Tenant for the benefit of creditors, except for Lender's right to operate as described in Article 30

- 4) Failure of Tenant to maintain its not-for-profit tax status.
- 5) Failure to timely meet any of the requirements of Section 6.02.
- 6) Tenant vacates or abandons the Premises, or otherwise ceases or discontinues its operations on the Premises, consistent with Section 29.03 below.

B. Termination after ten (10) calendar days' written notice by the Landlord to Tenant for doing any of the following:

1) Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Tenant makes the required payment(s) during the thirty (30) calendar day period following mailing of the written notice.

2) Notice of any condition posing a threat to health or safety of the public or students and not remedied within the ten (10) day period from date of written notice.

C. Termination after thirty (30) calendar days' written notice to Tenant for the reason(s) as set forth below:

1) Non-performance of any covenant of this Lease, other than non-payment of Rent and other matters listed in A and B above, and failure of the Tenant to remedy such breach within the thirty (30) day period from receipt of the written notice, or if such non-performance cannot with due diligence and in good faith be cured within thirty (30) days, Tenant fails within said thirty (30) day period to proceed promptly and with due diligence and in good faith to pursue curing said non-performance.

2) Default arising from the Tenant's failure to keep, observe and/or perform any of the terms contained in this Lease, excepting the non-payment of Rent and other matters listed in A and B above, and should such default shall continue for a period of thirty (30) days after

written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default or contingency which cannot with due diligence and in good faith be cured within thirty (30) days, Tenant fails within said thirty (30) day period to proceed promptly and with due diligence and in good faith to pursue curing said default. Should Landlord fail to notify the Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee in accordance with the terms of this paragraph, it shall not prevent Landlord from taking any action against Tenant, but the rights of any Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee hereunder shall remain unaffected until it receives notice in accordance with this paragraph.

D. The Tenant agrees that under no circumstances shall the Tenant be entitled to any termination or cancellation fee or any similar economic incentive or payment with regard to this Lease should this Lease be terminated or cancelled, unless specifically set forth in this Lease.

E. If an event of default by the Tenant shall occur, the Landlord, at any time after the appropriate cure period has expired, shall be permitted to give written notice to the Tenant, and any Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee who has appropriately notified the Landlord in accordance with Article 30, to secure a plat or waiver of plat for any of the unencumbered and/or undeveloped portions of the Premises, and the Tenant shall immediately commence such work to do so, and prosecute the same with

diligence until completion, with completion being required within twelve (12) months of when the Landlord has determined that the Tenant is in default of this Lease. Further,

(i) in the event that Tenant has failed to plat, as required herein above, Landlord shall be free to plat or secure a waiver of plat for the unencumbered and/or undeveloped Premises, or any portion thereof, in order to terminate this Lease on any portion(s) of the Premises that is unencumbered and/or undeveloped. Should Landlord undertake to perform such work, to plat or secure a waiver of plat, Landlord shall be permitted to secure reimbursement from the Tenant for any and all of the cost and expense associated with such work. And, upon any request by the Landlord, in furtherance of the foregoing, Tenant shall: (a) secure and maintain a surety bond, at its sole cost and expense, with the Landlord as obligee, in an amount equal to the cost to plat, or secure a waiver of plat, for the unencumbered and/or undeveloped Premises, which is subject to the Landlord's reversionary interest; and (b) Tenant shall provide the Landlord with evidence of said surety bond, and (c) said bond shall include a clause stating that it shall not be modified or changed without sixty (60) days advance written notice to the Landlord, and (d) said bond shall be written through surety insurers meeting the requirements of Section 287.0935, *Florida Statutes*, whether or not such statute is technically applicable to this matter. Landlord and Tenant further agree that Landlord shall determine the cost to plat, or secure a waiver of plat, for the Premises, or any portion thereof, which amount shall be the amount of the surety bond secured by Tenant. Further, should the Landlord, after being notified in writing by Tenant that the surety bond is about to expire, fail to provide the Tenant with a new amount for such pending costs within thirty (30) days, the Tenant shall maintain the surety bond in the exact same amount as the previous surety bond.

(ii) to terminate any and all obligations that Landlord may have under this Lease, in which event Landlord shall be released and relieved from any and all liability under this Lease, and the Lease shall terminate as to the Project.

F. If the Landlord terminates this Lease for any reason, including, but not limited to termination for the Tenant's failure to utilize and maintain the Premises for a public use, the Landlord shall not be required to incur any additional cost or expenses, or pay any compensation, in connection with regaining control of the Premises from the Tenant.

21.02 TERMINATION BY TENANT: The Tenant shall have the right to cancel this lease prior to the Expiration Date in the following instances:

A. The Tenant shall have the right to cancel this Lease at any time by giving the Landlord at least ten (10) days prior written notice after it has received notification that it will not receive the adequate funding to construct of the Project. Should Tenant elect to terminate this Lease, Tenant shall remain fully responsible for any and all costs, fees, expenses, and/or invoices incurred during the time of its occupancy on, or leasehold interest in, the Premises.

B. The Tenant shall have the right to cancel this Lease during the period in which the Tenant is required to complete the milestones, if the Tenant discovers that the Premises contains environmental concerns, such as hazardous materials or contamination of the soil and/or groundwater, which renders the development of the Premises for the Project too costly to proceed with, having the estimated cost for remediation of the Premises in excess of Fifty Thousand (\$50,000.00) Dollars.

C. Upon sixty (60) days prior written notice to the Landlord, the Tenant shall have the right to cancel this Lease for any reason whatsoever during the milestone period, and up until the time of Commencement of Construction, however, should the Tenant elect to exercise this right to cancel the Lease, the Tenant shall be then be immediately responsible to pay the Landlord for any and all Rent that the Tenant did not previously have to pay the Landlord during such period of time, along with any and all other fees, costs, and expenses that the Tenant is responsible to pay the Landlord and others (see Section 5.06 above).

ARTICLE 22
NOTICES

22.01 Notices provided herein in this paragraph shall include all notices required in this Lease or required by law. Any notice or other communication given or made pursuant to this Lease shall be in writing and shall be deemed given if: (i) delivered personally or by courier; (ii) sent by certified mail, return receipt requested, with all postage pre-paid; or (iii) sent by a nationally recognized overnight delivery service (such as FedEx or DHL) and addressed to a party at its respective address as set forth below (or at such other address as shall be specified, in writing, by a party, from time to time):

If to Landlord: MIAMI-DADE COUNTY
Internal Services Department
111 N.W. 1st Street, Suite 2460
Miami, Florida 33128-1907
Attention: Director

and: MIAMI-DADE COUNTY
Community Action and Human Services Department
701 N.W. 1st Court, 10th Floor
Miami, Florida 33136
Attention: Director

with a copy to: County Attorney's Office
Miami-Dade County
111 N.W. 1st Street, 28th Floor
Miami, Florida 33128

Attention: County Attorney

If to Tenant: The SEED Foundation, Inc.
1776 Massachusetts Avenue, NW, Suite 600
Washington, DC 20036

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, or delivery to overnight courier or express delivery service, and shall be deemed to have been received upon receipt or refusal thereof. For the sake of convenience and rapidity of transmission, copies of notices may be sent by electronic or facsimile transmission, but such transmissions alone, or together, shall not be deemed to satisfy the notice requirements of this Lease absent a written acknowledgement by the other party of actual receipt or the giving of notice by one of the other means as stated above.

ARTICLE 23
INSURANCE

23.01 Prior to occupancy, Tenant shall furnish to the Real Estate Development Division of Miami-Dade County, c/o Internal Services Department, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance as required by Chapter 440, *Florida Statutes*.

B. Commercial General Liability Insurance on a comprehensive basis, including Explosion, Collapse and Underground Liability coverage, in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. Coverage must include Abuse and Molestation Liability. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

DESIGN STAGE

In addition to the insurance required in (A) -- (C) above, a certificate of insurance must be provided as follows:

D. Professional Liability Insurance in the name of the Tenant or the licensed design professional employed by the Tenant in an amount not less than \$500,000 per claim.

CONSTRUCTION PHASE

In addition to the insurance required in (A) – (D) above, the Tenant shall provide or cause its General Contractor to provide original policies indicating the following types of insurance coverage prior to any construction:

E. Completed Value Builders' Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

F. Flood Insurance shall be provided for those properties found to be within a flood hazard zone, in an amount not less than the full replacement values of the completed structure(s) or the maximum amount of coverage available through the National Flood Insurance Program (NFIP), whichever is greater. The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A. This policy will be provided at such time that the building's walls and roof exist.

OPERATION/MANAGEMENT PHASE

After the Construction Phase is completed and occupancy begins, the following insurance must be kept in force throughout the duration of the Lease:

1. Commercial General Liability in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. Coverage must include Abuse and Molestation Liability. Miami-Dade County must be shown as an additional insured with respect to this coverage.

2. Property Insurance Coverage on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of the property. The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

3. Flood Insurance coverage for those properties found to be within a flood hazard zone for the full replacement values of the structure(s) or the maximum amount of coverage available through the National Flood Insurance Program (NFIP). The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

23.02 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

ARTICLE 24 **PERMITS, REGULATIONS & SPECIAL ASSESSMENTS**

24.01 Tenant covenants and agrees that during the term of this Lease, the

Tenant will, at its sole cost and expense, obtain any and all necessary governmental permits, licenses, certificates, authorizations, warrants, and approvals, and that all uses of the Premises will be in complete conformance with any and all applicable laws, ordinances, codes, rules, regulations, including all applicable zoning regulations.

24.02 Any and all charges, taxes, or assessments levied against the Premises shall be paid by Tenant, and failure to do so will constitute a breach of this Lease.

24.03 County as Sovereign

It is expressly understood and agreed that notwithstanding any other provision of this Lease and the Landlord's status thereunder:

(a) The Landlord retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Premises and/or the operation thereof, or be liable for the same; and

(b) The Landlord shall not by virtue of this Lease be obligated to grant the Tenant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Premises.

24.04. No Liability for Exercise of Police Power

Notwithstanding and prevailing over any contrary provision in this Lease of any other document relating to this matter, including any Landlord covenant or obligation that may

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be contained in this Lease, or any implied or perceived duty or obligation of the Landlord including but not limited to the following:

- (a) To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist the Tenant, regardless of the purpose required for such cooperation;
- (b) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;
- (c) To apply for or assist the Tenant in applying for any county, city or third party permit or needed approval; or
- (d) To contest, defend against, or assist the Tenant in contesting or defending against any challenge of any nature;

shall not bind the Board of County Commissioners, the Regulatory and Economic Resources (RER) department or any other county, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the Landlord or any other applicable governmental agencies in the exercise of its police power; and the Landlord shall be released and held harmless, by the Tenant from and against any liability, responsibility, claims, consequential or other damages, or losses to the Tenant or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the parties recognize that the

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approval of any building permit and/or certificate of occupancy will require the Landlord to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Lease, the Landlord shall have no obligation to approve, in whole or in part, any application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver. The Landlord's obligation to use reasonable good faith efforts in the permitting of the use of County-owned property regarding the Premises shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any requests or inquiries by Tenant as authorized by this Lease. Moreover, in no event shall a failure of the Landlord to adopt any of the Tenant's request or application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver be construed a breach or default of this Lease.

ARTICLE 25
OWNERSHIP OF ABANDONED PERSONAL PROPERTY

25.01 At the termination of this Lease, Tenant shall peaceably leave, quit and surrender the Premises. Upon termination of this Lease, the Tenant, with the Landlord's permission, shall promptly remove its personal property and the personal property of its employees, agents, and contractors as provided in Section 9.12 hereof. Should Tenant fail to remove its personal property, and/or the personal property of others within thirty (30) days, the Tenant agrees that said personal property shall be deemed abandoned and the Landlord may dispose of the personal property in the manner it elects, without any compensation, remuneration or reimbursement to the Tenant or any other owner or person with an interest in such personal property.

ARTICLE 26
EMINENT DOMAIN

26.01 The word "Taking" in this Lease shall mean any taking of the title to, access to, or use of the Premises or any portion thereof by any governmental authority or any conveyance under the threat thereof, for any public, quasi-public, or private use or purpose. A Taking may be total or partial, permanent or temporary.

26.02 Upon receipt by either the Landlord or the Tenant of any notice of Taking, or the institution of any proceedings for Taking the Premises, or any portion thereof, the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and may be represented by an attorney.

26.03 The full amount of any award whether *pro tanto* or final for any Taking (the "Award"), shall, notwithstanding any allocation made by the awarding authority, be paid and allocated as set forth below, provided that there shall first be deducted from the Award the following, in the order stated: (i) all reasonable fees and expenses of collection, including reasonable attorneys' fees and experts' fees, which shall be paid to the party which has paid such fees and expenses and/or undertaken such work; (ii) any unpaid fees or expense due to the Landlord, or due to a third-party, which Landlord will be ultimately responsible for; and (iii) any outstanding amounts which represent unpaid loans used by Tenant for the construction of any structures and/or improvements on the Premises; and (iv) the Tenant's investment in the cost of construction of Tenant's Improvements. With respect to the balance of such Award, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, with consideration given to the fact that the Landlord's interest in the Premises is not limited to the land encumbered by this Lease, but also the reversionary interest in the Premises

upon expiration of the term and the structure(s) and Improvements thereon and Tenant's interest including the then-term of this Lease and all renewal terms.

26.04 In the event of a permanent Taking of the fee simple interest or title of the Premises, or control of the entire leasehold estate hereunder (a "Total Taking"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any and all obligations of Tenant under this Lease have been fully and completely complied with by Tenant as required by this Lease, as of the date of said Total Taking, otherwise Tenant hereby agrees that an appropriate amount of its portion of the Award shall be paid to Landlord, and such payment shall be allocated to complete any unfinished work by Tenant or fulfill any unfulfilled obligations, to the extent that the cost of fulfilling such obligations is included in the Award, other than construction or repair of Improvements.

26.05 If, in the event of a partial Taking of less than the entire Premises, the remaining portion of the Premises not so taken cannot be adequately and economically restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking, then Tenant shall have the right, to be exercised by written notice to Landlord within one hundred twenty (120) days after the date of Taking, to terminate this Lease on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case Tenant shall pay and shall satisfy all rents and other payments due and accrued hereunder up to the date of such termination and shall perform all of the obligations of Tenant hereunder to such date, and thereupon this Lease and the term herein demised shall cease and terminate. Upon such termination the Tenant's

interest under this Lease in the remainder of the leasehold interest not taken shall be sold in accordance with applicable Law, and the proceeds of the sale shall be combined with the award given for the partial Taking with the entire amount then being distributed as if a total Taking had occurred, and the Tenant during any such sale period will not be liable for the payment of Rent on the remaining portion of the leasehold interest. Landlord shall have the first option to purchase Tenant's remaining leasehold interest under this Lease, at its fair market value for a period of one hundred eighty (180) days after the determination of fair market value, which value shall be determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party, within one hundred and fifty (150) days from the date the Lease was terminated). The fair market value specified in the preceding sentence shall be limited to the fair market value of the buildings and improvements, which fair market value shall include the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease, and in no event shall such value include any fee simple interest in the Land. All appraisal costs shall be split equally between the Landlord and Tenant. If Landlord fails to purchase, the remainder of the leasehold interest may be sold to a purchaser consistent with the terms and conditions of this Lease, and this Lease will then be accordingly reinstated, and modified to reflect the reduced size of the Premises, and in addition to Rent, other costs will be suspended and/or waived by the Landlord, until the time that the leasehold interest is actually acquired by the purchaser of the Tenant's leasehold interest.

ARTICLE 27
Intentionally Deleted

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ARTICLE 28
WAIVER

28.01 If, under the provisions hereof, Landlord or Tenant shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of Landlord's or Tenant's rights hereunder, unless expressly stated in such settlement agreement. No waiver by Landlord or Tenant of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by Landlord or Tenant of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of lesser amount than the monthly installments of Rent (or Additional Rent if such obligations are stipulated herein) shall be deemed to be other than on account of the earliest amount of Rent due and owing to the Landlord; and likewise neither shall any endorsement or statement on any check or letter accompanying a check for payment of Rent or any other amounts owed to Landlord be deemed an accord and satisfaction, and the Landlord may accept such check or payment without prejudice to or waiver of Landlord's right to recover the balance of such Rent or other amount owed, or to pursue any other remedy provided in this Lease or at law. Further, any endorsement or statement on any check or letter accompanying a check for payment of Rent or any other amounts owed to Landlord may not be deemed to limit or restrict the Landlord in any manner whatsoever, and such endorsement or statement shall have no effect whatsoever, and shall be deemed to have never been written at all. No reentry by Landlord and no acceptance by Landlord of keys from Tenant shall be

considered an acceptance of a surrender of this Lease.

ARTICLE 29
DEFAULT OF TENANT AND REMEDIES

29.01 Consistent with and in addition to Article 21, Termination, above, if Tenant shall fail comply with the terms and/or condition of this Lease, and if such violation or failure continues beyond any applicable cure period as provided herein, then Landlord may proceed with any remedy available at law or in equity in the State of Florida, or by such other proceedings, including reentry and possession, as may be applicable, and unless otherwise stated this Lease, where in this Lease is states that the remedy is termination of this Lease, then in such instance, the other remedies at law or in equity shall not be available to the Landlord for such default, except for Section 29.07 hereof.

29.02 Should Tenant elect or fail to perform or observe any covenant or condition of this Lease (other than defaults that result in automatic termination, and a default involving the payment of Rent, or a condition posing a threat to the health and safety of the public or students), which default has not been cured within thirty (30) calendar days after the giving of notice by Landlord, unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no event of default shall occur so long as Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same, and/or such remedy for any such default is not otherwise addressed in this Lease, then the Landlord shall be permitted to terminate this Lease, and immediately take possession of the Premises.

29.03 Should Tenant vacate or abandon the Premises at any time during the term of this Lease, or otherwise ceases or discontinues its operations, for a continuous

period of thirty (30) days or more, for other than fire or casualty, the Landlord shall be permitted to immediately re-take possession of the Premises. It shall be the Landlord's reasonable determination as to whether or not the Tenant has either vacated or abandoned the Premises.

29.04 Upon any default, and after the expiration of any cure period, and the termination of this Lease, and/or the Tenant's abandonment of the Premises, the Landlord may, in accordance with any lawful process, enter the Premises and take possession of any and all goods, inventory, equipment, fixtures and all other personal property of Tenant situated in the Premises without liability for trespass or conversion, and may sell or otherwise dispose of any and all such property after thirty (30) calendar days notice to Tenant, which notice shall constitute reasonable and sufficient notice (so long as such property is reasonably valued by the Landlord at more than Five Thousand (\$5,000.00) Dollars, otherwise, such property shall be considered abandoned by the Tenant, and Landlord shall have no obligation to either store, maintain, sell or otherwise dispose of the property). The proceeds of any such sale or disposition shall be applied first to the payment of all costs and expenses of conducting the sale and/or caring for and/or storing said property, including reasonable attorneys' fees; second, toward the payment of any indebtedness, including (without limitation) indebtedness for Rent, which may be due or become due to Landlord; and third, to pay Tenant, upon written demand by the Tenant, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid, so long as Tenant in fact makes such demand within ninety (90) calendar days of any such sale or disposition of property.

29.05 Upon any default, Landlord may perform, on behalf of and at the expense of the Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice of, the cost of which

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performance by Landlord, together with interest thereon, at the highest legal rate of interest as permitted by the State of Florida, and shall be immediately payable by Tenant to Landlord.

29.06 Notwithstanding the provisions of clause 29.05 above, and regardless of whether an event of default shall have occurred, Landlord may exercise the remedy described in clause 29.05 without any notice to Tenant if Landlord, in its good faith judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation by Tenant constitutes an emergency.

29.07 If this Lease is terminated or cancelled by Landlord, Tenant nevertheless shall remain liable for any and all Rent and damages which may be due, become due or be sustained by Landlord, along with any and all reasonable costs, fees and expenses including, but not limited to, attorneys' fees, costs and expenses incurred by Landlord in pursuit of its remedies hereunder, or in renting the Premises or a portion thereof to others. Further, the Landlord hereby expressly agrees that after it retakes possession of the Premises, that it shall institute a good faith effort to mitigate the Tenant's ongoing exposure for the Rent by reletting the Premises to a different entity.

29.08 In addition to any and all other remedies in law or in equity that either party hereto may have against the other, the prevailing party shall be entitled to all actual damages, costs and expenses arising from the other party committing an event of default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels; provided, however, that neither party will be entitled to seek or receive indirect, consequential or exemplary damages.

29.09 All rights and remedies of the parties under this Lease shall be

cumulative and shall not be exclusive of any other rights and remedies provided to the parties under applicable law.

29.10 The provisions of this Article 29 shall survive any termination of this Lease.

ARTICLE 30
RIGHT TO MORTGAGE AND SUBLEASE LEASEHOLD INTEREST

30.01 Right to Mortgage Leasehold. Notwithstanding Article 12, pertaining to Assignments and Subleases, to the contrary, the Tenant, or its sublessees, licensees or assigns (hereinafter "Sublessees"), shall have the right from time to time, and with the consent of Landlord, which shall not be unreasonably withheld or delayed, to mortgage and otherwise encumber their rights regarding the Premises, and particularly their leasehold interest, under this Lease, and/or a sublease thereof, in whole or in part, by a mortgage, or similar financial instrument given by a lender as a security interest in the leasehold interest of this Lease (hereinafter "Leasehold Mortgage") or by a lender for a sub-leasehold mortgage ("Subleasehold Mortgage"), provided such lender is a recognized Lending Institution. Except as otherwise reasonably approved by the Landlord, through the County Mayor, or the Mayor's designee, such mortgages or encumbrances shall be expressly subject to the terms, covenants and conditions of this Lease, and at all times shall be inferior and subject to the prior right, title and interest of Landlord herein as security for the performance of the terms and conditions of this Lease. Tenant and any Sublessee shall provide Landlord with a copy of all such mortgages. The granting of a mortgage against all or part of the leasehold estate in the Premises shall not operate to make the lender thereunder liable for performance of any of the covenants or obligations

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of Tenant or Sublessee under this Lease or a sublease, except in the case of a lender which owns or is in possession or control of all or a portion of the Premises, and then only for the applicable portion of the Premises, and its period of ownership or possession, or as otherwise provided under applicable law, but Landlord shall always have the right to enforce the Lease obligations against such portion of the Premises, including such obligations accruing prior to such period of ownership or possession, subject to the terms hereof. The amount of any mortgage may be increased for additional construction on the Premises, first that is approved by the Landlord whether by an additional mortgage and/or agreement consolidating the liens of such mortgage, or by amendment of the existing mortgage, and may be permanent or temporary, replaced, extended, increased, refinanced, consolidated or renewed with the consent of Landlord, which shall not be unreasonably withheld or delayed. Such mortgage(s) may contain a provision for an assignment of any Rent, revenues, monies or other payments due to Tenant or Sublessee as a landlord (but not from Tenant or Sublessee to Landlord), from Tenant or a lender, and a provision therein that the lender in any action to foreclose the same shall be entitled to the appointment of a receiver.

30.02 Notice to Landlord of Mortgage. A notice of each Leasehold Mortgage and Subleasehold Mortgage shall be delivered to the Landlord specifying the name and address of such holder and/or lender of a Leasehold Mortgage (hereinafter "Leasehold Mortgagee") and of such holder and/or lender of a Subleasehold Mortgage (hereinafter "Subleasehold Mortgagee") to which notices shall be sent. Landlord shall be furnished a copy of each such recorded mortgage within thirty (30) days of such mortgage being

recorded. For the benefit of any such Leasehold or Subleasehold Mortgagee who shall have become entitled to notice as hereinafter provided in this Article 30, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender, termination or modification of this Lease at any time while such Leasehold or Subleasehold Mortgage(s) shall remain a lien on Tenant's or Sublessee's leasehold estate. Any such Leasehold or Subleasehold Mortgagee(s) will not be bound by any modification of this Lease with respect to the portion of the Premises subject to such Leasehold Mortgage(s) or Subleasehold Mortgage(s), unless such modification is made with the prior written consent of such Leasehold or Subleasehold Mortgagee, and no sale or transfer of Landlord's fee simple interest in the Premises or any portion thereof to Tenant shall terminate this Lease by merger or otherwise so long as the lien of the Leasehold or Subleasehold Mortgage remains undischarged.

30.03 Notices to Leasehold and Subleasehold Mortgagee(s) and Sublessee(s). No notice of default under Article 21, or notice of failure to cure a default under Article 29, shall be deemed to have been given by Landlord to Tenant and enforceable against any Leasehold Mortgagee, Subleasehold Mortgagee, and /or Sublessee unless and until a copy has been given to each Leasehold Mortgagee, Subleasehold Mortgagee and Sublessee who shall have properly notified Landlord pursuant to Article 30.02, of its name, address and its interest in the Premises. Landlord agrees to accept performance and compliance by any such Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such

act or performance is timely under the appropriate provisions of this Lease. Nothing contained herein shall be construed as imposing any obligation upon any such Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee to so perform or comply on behalf of Tenant.

30.04 Right to Cure Default of Tenant.

30.04.1 In addition to any rights the Leasehold or Subleasehold Mortgagee or Sublessee may have by virtue of Article 30 herein, if, within ninety (90) days after the mailing of any notice of termination or such later date as is thirty (30) days following the expiration of the cure period, if any, afforded Tenant (hereinafter the "Mortgagee Cure Period"), such Leasehold Mortgagee, or Sublessee, or Subleasehold Mortgagee shall pay, or arrange to the satisfaction of Landlord for the payment of, a sum of money equal to any and all Rent or other payments due and payable by Tenant hereunder with respect to the portion of the Premises to which such Leasehold or Subleasehold Mortgagee or Sublessee claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share, based on proportion of the land area the Premises encumbered, any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by the Landlord in preparation for terminating this Lease, and in acquiring possession of the Premises, then, upon the written request of such Leasehold Mortgagee, Sublessee or Subleasehold Mortgagee made any time prior to the expiration of the Mortgagee Cure Period, Landlord and the party making such request (or its nominee) shall mutually execute prior to the end of such Mortgagee Cure Period a new lease of the Premises (or such portion thereof as they have an interest in or mortgage on) for the remainder of the term of this Lease and on the same terms and conditions, and

with the same priority over any encumbrances created at any time by Landlord, its successors and assigns which Tenant has or had by virtue of this Lease; provided, however, that in addition to the above payments such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee shall have paid to Landlord a sum of money equal to the Rent and other payments for such portion of the Premises accruing from the date of such termination to the date of the commencement of the term of such new lease, together with their pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Landlord or person receiving an encumbrance from Landlord, and the priority shall be self operative and shall not require any future act by Landlord. Such new lease(s) shall contain the same clauses subject to which this Lease is made, and shall be at the same Rent and incorporate other payments for such portion of the Premises due Landlord and upon the terms as are herein contained. Tenant(s) under any such new lease(s) shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Premises as Tenant has under this Lease.

30.04.2 If, within the Mortgagee Cure Period, more than one (1) request for a new lease shall have been received by Landlord for the same portion of the Premises, priority shall be given (regardless of the order in which such requests shall be made or received) to the Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee making such a request in order of their priority of interest in said portion of the Premises. It shall be a condition of the effectiveness of any request for a new lease that a copy of

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such request is sent (with receipt for delivery) by the Sublessee or Subleasehold Mortgagee, as the case may be, to the Leasehold Mortgagee.

30.04.3 Simultaneously with the making of such new lease(s), the party obtaining such new lease and all other parties junior in priority of interest in the Premises shall execute, acknowledge and deliver such new instruments, including new mortgages and a new sublease, as the case may be, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

30.04.4 Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Premises to such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or to their respective nominee until the new lease(s) has been executed by all pertinent parties. Landlord agrees, however, that Landlord will, at the cost and expense of such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Tenant or any other occupants of the Premises.

30.04.5 If such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or respective nominee shall acquire a new lease pursuant to this Article 30, and if, upon the termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Landlord agrees that the same shall be paid to the new tenant, in the same manner and to

the same extent as it would have been paid or applied the same to or for the benefit of Tenant as if this Lease had not terminated; subject however to Landlord's right to offset any damages accrued as a result of said termination.

30.04.6 Upon the execution and delivery of a new lease(s) pursuant to this Article 30, all Subleases which theretofore may have been assigned to Landlord or have reverted to Landlord upon termination of this Lease shall be assigned and transferred, without recourse against Landlord, by Landlord to the tenant under any such new lease(s). Between the date of termination of this Lease and the date of execution and delivery of the new lease(s), if the Leasehold Mortgagee, Subleasehold Mortgagee, or Sublessee shall have requested such new lease(s) as provided for in this Article 30, Landlord will not cancel any or sublease or accept any cancellation, termination or surrender thereof (unless such termination shall be effective as a matter of law on the termination of this Lease) without the consent of the Leasehold or Subleasehold Mortgagee or Sublessee, except:

30.04.6.1 for default as permitted in such, and

30.04.6.2 for the purpose of permitting Landlord to enter into a sublease with another or Sublessee who will occupy not less than the same amount of space demised by the canceled or sublease at a rental rate per square foot and for terms not less than the rental rates per square foot, and for at least the remainder of the unexpired terms, respectively, of the canceled or sublease.

30.04.7 Nothing contained in this Lease shall require any Leasehold or Subleasehold Mortgagee or its nominee as a condition to its exercise of its right to enter into a new lease to cure any default of Tenant or Sublessee not reasonably susceptible of

being cured by such Leasehold or Subleasehold Mortgagee or its nominees, in order to comply with the provisions of this Article 30.

30.04.8 The provisions of this Article 30 shall survive any termination of this Lease.

30.05 Leasehold in Reversion and Assignment in Lieu of Foreclosure. Tenant's or Sublessee's right to mortgage and otherwise encumber this Lease and the leasehold estate in whole or in part shall include the right to require a lease in reversion which lease in reversion shall become effective upon the termination of this Lease, and shall have the same terms and provisions, including expiration date, as this Lease. The Leasehold or Subleasehold Mortgagee shall have the unrestricted right to take this Lease by lease in reversion or by assignment in lieu of foreclosure and to sell it either after foreclosure or after taking the assignment or becoming tenant under the lease in reversion all without the consent of Landlord. The Leasehold or Subleasehold Mortgagee shall not be liable for Tenant's obligations hereunder until such a time as it becomes the new tenant, either by lease in reversion, foreclosure or assignment and then only for the period of its ownership or possession of the leasehold estate.

30.06 Rights to Sublease and Non-Disturbance to Sublessees. Tenant shall have the right to enter a Sublease and consent to any sub-subleases without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no sublease or sub-sublease shall relieve Tenant of any obligations under the terms of this Lease unless a release is granted by the Landlord in accordance with this Article 30 above. Additionally, each sublease and sub-sublease must be for a use compatible with the standards and requirements set forth in this Lease. Tenant must give written notice to

Landlord specifying the name and address of any Sublessee and sub-sublessee to which all notices required by this Lease shall be sent, and a copy of the sublease and sub-sublease agreement. Tenant shall provide Landlord with copies of all subleases and sub-subleases entered into during each quarter. Landlord agrees to grant Non-Disturbance Agreements for Sublessees and/or sub-sublessees which provides that in the event of a termination of this Lease, the portion of the Premises covered by such sublease and/or sub-sublease, due to an event of default committed by the Tenant, such Sublessee and sub-sublessee will not be disturbed and will be allowed to continue peacefully in possession directly under this Lease as the successor tenant, provided that the following conditions are met:

30.06.1 the Sublessee and any sub-sublessee is not a "related party" to Tenant provided, however, that Tenant, or any individual, corporation, general or limited partnership or other entity holding an equity interest in Tenant, shall be permitted to be a co-general partner or special limited partner in any tax credit limited partnership relating to the Premises, which limited partnership may be a Sublessee and/or sub-sublessee without being deemed a "related party"; and provided further that affiliates of the Tenant may enter into subleases for commercial or other uses consistent with this Lease on market terms without being deemed a "related party"; and

30.06.2 the Sublessee and any sub-sublessee shall be in compliance with the terms and conditions of its sublease and any sub-sublease; and

30.06.3 the Sublessee and any sub-sublessee shall agree to attorn to Landlord. Landlord further agrees that it will grant such assurances to such Sublessees and sub-sublessees so long as they remain in compliance with the terms of their subleases

and sub-subleases, and provided further that any such subleases and sub-subleases do not extend beyond the expiration of the term of this Lease.

30.07 Estoppel Certificates from Landlord. Upon request of Tenant or any Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee, Landlord agrees to give such requesting party an estoppel certificate in accordance with this Article 30. Landlord agrees at any time and from time to time, upon not less than thirty (30) days prior written notice by Tenant or by a Leasehold Mortgagee, Sublessee or Subleasehold Mortgagee, to furnish a statement in writing, in substantially the form attached hereto as "Exhibit C" setting forth the Rent(s), payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Section 30.07 may be relied upon by any prospective assignee, transferee, or purchaser of Tenant's interest in this Lease, any prospective Sublessee or any Leasehold Mortgagee or Subleasehold Mortgagee or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have had no actual knowledge.

30.08 Limited Waiver of Landlord Lien. In order to enable Tenant and its Sublessees to secure financing for the purchase of fixtures, equipment, and other personalty to be located on or in the Premises, whether by security agreement and

financing statement, mortgage or other form of security instrument, Landlord does waive and will from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory, common law or contractual liens securing payment of Rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment, or other personalty.

30.09 No Subordination or Mortgaging of Landlord's Fee Title. There shall be no subordination of Landlord's fee simple interest in the Premises to the lien of any Leasehold Mortgage or Subleasehold Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Leasehold Mortgagee or Subleasehold Mortgagee may impose any lien upon the Landlord's fee simple interest in the Premises.

ARTICLE 31 **RENTAL REGULATORY REQUIREMENTS**

31.01 After the award of any funding by the Landlord and/or any other government or governmental entity regarding the Premises, the Tenant will enter into a grant, loan, and/or other agreement with the Landlord and/or any other government or governmental entity, which shall be in conformance with all applicable rules and regulations of the Federal Government, State of Florida and/or the Landlord, for a period of not less than twenty (20) years. The Tenant hereby agrees that the use of such funds shall be in accordance with the terms and conditions of this Lease, and for developing a public boarding school on the Premises. Any failure by the Tenant to utilize the funds correctly, pursuant to the terms and conditions of the grant, loan, and/or other agreement shall be an event of default under this Lease.

ARTICLE 32 **ART IN PUBLIC PLACES**

32.01 The Tenant acknowledges and agrees that in accordance with Section 2-11.15, of the *Miami-Dade County Code*, it is required to allocate not less than one and one-half (1½%) percent of the total capital cost (design and construction) of the development to the Art in Public Places Trust Fund. These funds can solely be used for commissioning and/or acquiring works of public art for the Premises. The Tenant agrees to work collaboratively with the Miami-Dade Art in Public Places Trust to administer the “artist selection process” and implement the Art in Public Places program as defined in the Miami-Dade County Procedures Manual for Art in Public Places, which manual is attached hereto, and marked as “Exhibit D”, and incorporated herein by reference.

ARTICLE 33
ADDITIONAL PROVISIONS

33.01 Tenant Shall Not Discriminate. The Tenant for itself, and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- A. In the use of Leased Premises, no person, on the grounds of race, sex, age, color, national origin, or physical handicap, shall be excluded from participation therein, or be denied the benefits thereof, or be otherwise subjected to discrimination.

- B. In the construction of any improvements on, over, or under such land, and in the furnishings of services thereon, no person, on the grounds of race, color, sex, age, national origin, or physical handicap, shall be excluded from participation therein or be denied the benefits accruing therefrom, or be otherwise subjected to discrimination.

- C. The Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving

federal assistance through the Department of Health, Education and Welfare – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

- D. In the event of breach of any of the above non-discrimination covenants, the Landlord shall have the right to terminate this lease and to avail itself of any of the remedies set forth herein for default of this lease. This provision shall not be effective until the procedures of Title 45, Code and Federal Regulations, Part 80 are followed and completed including exercise or expiration of appeal rights.
- E. The Tenant shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract, with respect to his hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of age, sex or physical handicap, except where based on a bona fide occupation qualification or because of marital status, race, color, religion, national origin, or ancestry. The Tenant is not responsible for discrimination against the physically handicapped employee or applicant for employment if the Landlord fails to provide facilities which meet the requirements of Section 504.
- F. Tenant agrees, in accordance with Chapter 11A of the Miami-Dade County Code, that it shall not discriminate against any employee, sub-tenant, person, etc. on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, or status as victim of domestic violence, dating violence or stalking.

33.02 Tenant agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution No. 85-92 dated January 21, 1992, in the use of the

Premises, and the construction and future operation of a public boarding school thereon, and maintenance of any such buildings or structure(s) and/or improvements that are constructed on or about the Premises.

33.03 Notification of any injury on the Premises. Tenant agrees that it will immediately notify the Landlord should any person sustain(s), or is found to have sustained, a serious bodily injury or dies on or about the Premises, due to any cause that might give rise to liability for or to the Landlord, for personal injury or wrongful death. The parties hereby agree that the definition of serious bodily injury shall include, but not be limited to, any injury to a person which requires medical treatment either at a hospital or by emergency medical technicians. Further, in instances where someone sustained a serious bodily injury or died, due to any cause that might give rise to liability for or to the Landlord, for personal injury or wrongful death, in addition to any other requirement(s) regarding notice under this Lease, the Tenant shall also immediately (same day, or in situations where the same day is not possible, then next day) call the Landlord's Internal Services Department, and notify the Director of such incident, in detail, with or without the name of the individual that died or sustained the serious bodily injury. Further, in instances where an individual died or sustained a serious bodily injury, the Tenant must complete a detailed injury and incident report and immediately (same day or next day) send it to the Landlord, in accordance with the terms of the notice provisions found in this Lease.

33.04 Security. The Tenant, as mentioned above in Section 14.01 of this Lease, is solely responsible for securing and maintaining its own security in and around, and for, the Premises. Should the Tenant, at any time and for any reason, believe that security and/or additional security is needed to protect the Tenant, or any of its invitees, licensees, guests, employees, staff, management, students/residents, and/or

anyone else, and/or the personal property belonging to any of the foregoing, and/or the Premises, then it is understood and agreed that Tenant shall, at its sole cost and expense, hire and maintain such security. The Tenant further acknowledges and agrees that the Landlord is not expected to supply, or otherwise provide, any security staff and/or security equipment to, on, or about the Premises which would be designed to prevent or deter vandalism, theft, burglary, and/or any other type of criminal activity or any other type of incident.

33.05 The Tenant hereby acknowledges that in accordance with the Landlord's rules and regulations, all privately funded construction with a total value over \$200,000 must comply with Sections 10-33.02 and 2-10.4.01 of the County Code of Miami Dade County ("Code"), which governs, respectively, the Landlord's Community Small Business Enterprise ("CSBE") program, and the Community Business Enterprise ("CBE") Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services. As a result, the Tenant hereby agrees to timely submit, or cause to be submitted, any design and construction packages, to the Small Business Development Division of the Regulatory and Economic Resources Department ("SBD/RER") prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. The Tenant further agrees that all design and construction packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above mentioned sections of the Code.

ARTICLE 34
GOVERNING LAW

34.01 This Lease, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed

by and construed in accordance with the laws of the State of Florida. The parties agree that venue shall be in Miami-Dade County, Florida.

ARTICLE 35
WRITTEN AGREEMENT

35.01 This Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto and it may be modified only by resolution approved by the Board of County Commissioners.

35.02 Each signatory of this Lease represents hereby that he or she has the authority to execute, bind and deliver the same on behalf of the party hereto for which such signatory is acting.

35.03 Each party has participated fully in the negotiation and preparation of this Lease with full benefit of counsel. Accordingly, this Lease shall not be more strictly construed against either party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[ONLY THE SIGNATURE PAGE REMAINS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

Landlord:

MIAMI-DADE COUNTY

a political subdivision of the State of Florida

By: _____

Name: _____

Title: _____

Date signed: _____

Witness/Attest:

Witness/Attest:

Tenant:

THE SEED FOUNDATION, INC.

a Washington D.C., not-for-profit corporation

By: _____

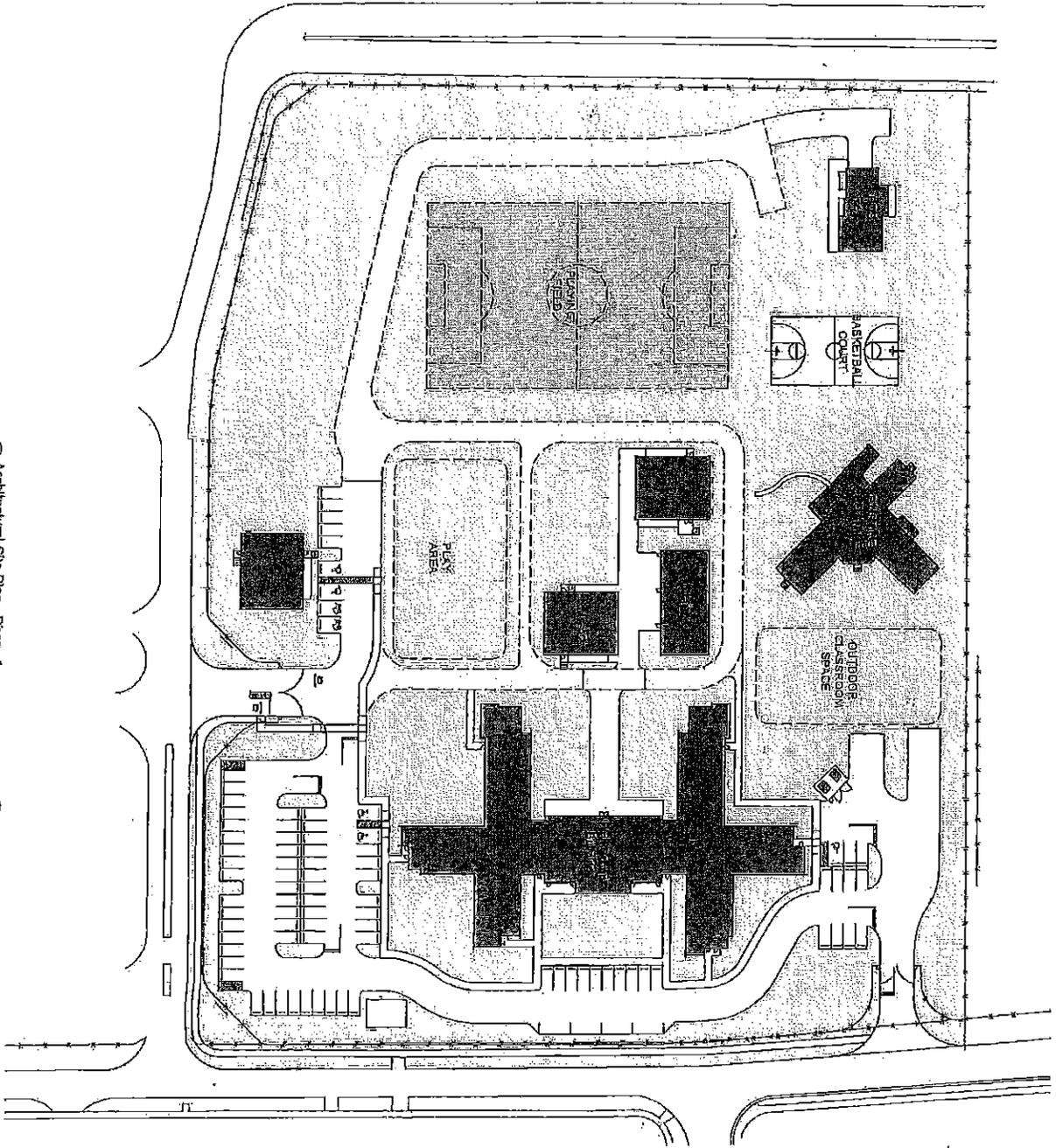
Name: RATHU VINNAROTA

Title: CEO

[Signature]
Witness/Attest:

[Signature]
Witness/Attest:

EXHIBIT B - DEVELOPMENT CONCEPT



Architectural Site Plan - Phase 1



Exhibit
B

DATE	DESCRIPTION

The SEED School of Miami
 SEED School of Miami Foundation, LLC
 1770 Massachusetts Ave, NW
 Washington, DC 20036



MARK THOMAS ARCHITECTS
 1111 BAYVIEW BLVD, SUITE 1000, MIAMI BEACH, FL 33139
 TEL: 305.555.1111 FAX: 305.555.1112

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6/1987
Record Book -
13359 at top
Page of No
Public Records
of Dade County

EXHIBIT B-1

EST. JUL 28 11:07 AM '87 87R289278
RE 13359 1986
DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS that the undersigned (the "Owner") being the owner, or having some right, title or interest in the following described property (the "Property"), lying, being and situated in Dade County, Florida, to-wit:

All that part of Section 31, Township 54 South, Range 40 East described as follows:

The West half of the N.E. 1/4 of the S.W. 1/4 less the North 35 feet, the East 25 feet and the South 25 feet thereof, and less the West 25 feet of the South half thereof; and the East half of the N.E. 1/4 of the N.W. 1/4 of the S.W. 1/4 less the North 35 feet thereof.

As well as the East 1/2 of the N.E. 1/4 of the S.W. 1/4 of Section 31, Township 54 South, Range 40 East, Dade County, Florida, less the North 35 feet and the East 35 feet and the South 25 feet and the West 25 feet thereof.

in order to assure the County Commission of Dade County, Florida, that representations made to the Commission by the Owner during review of the Owner's request for a revision of restrictive covenants as set forth below will be abided by, voluntarily makes the following Declaration of Restrictions (the "Declaration") covering and running with the Property, and declares that the Property and every part thereof will be used only in accordance with the Restrictions set out in this Declaration, as follows:

1. The Property and every part of it may be used for the following institutional purposes only: schools, public or private; home for the aged and/or mentally or physically disabled; sanitarium; convalescent home; day care center; adult congregate living facility; other compatible caretaking institutional use. Neither the Property, nor any part thereof, shall be used for business, commercial, retail, manufacturing or non-institutional residential or other purposes not specifically listed above.
2. Dade County shall have the right of first refusal, at the same price, and on the same terms and conditions as a

PREPARED BY: Stanley B. Price, Esq.
One CentTrust Financial Center
100 S.E. Second Street
Miami, Florida 33131

DE 13359-1987

bona fide offer pursuant to a contract contingent on the County's right of first refusal for the sale or transfer of the Property or any portion thereof by Owner as well as Owner's successors, assigns or transferees, prior to the sale of the Property or portion thereof for the purposes enumerated in Paragraph 1. In the event that the County refuses to exercise its right of first refusal within 10 days of written notification of such bona fide offer by the Owner, the Owner may sell the Property or portion thereof for the express purposes delineated in Paragraph 1, and Dade County shall receive five (5) percent of the gross proceeds of the land value of the sale; provided, however, that if Owner should sell or transfer any particular portion of the Property of less than 11 acres within one (1) year of executing this Declaration, Dade County shall receive \$55,000.00 for the express purpose of improving County-owned parks within one (1) mile of the Property and such transfer or sale and any future transfers or sales of such particular portion of the Property shall not be subject to the right of first refusal provided for herein. In no event shall Dade County be entitled to multiple payments of five (5) percent on real property for which it has previously received payment including the less-than-eleven-acre portion of the Property which may be transferred within one (1) year of the execution of this Declaration.

3. In the event payments are not made as promised, or uses are not restricted as promised, in addition to any other remedies available, the Dade County Departments, including Building and Zoning Department, are hereby authorized to withhold any further permits, and refuse any inspections or grant any approvals, until such time as this Declaration is complied with.

4. In the event of any transfer or sale pursuant to Paragraph 2 herein, the then Owner of the property shall inform in writing, each lessee, resident, renter, or user of the property of all uses within 750 feet of the property.

5. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of

133590 1988

remedies, nor shall it preclude the party exercising the same from exercising any other additional rights, remedies or privileges.

As further part of this Declaration, it is hereby understood that any official inspector of the Dade County Building and Zoning Department, or its agents duly authorized, has the privilege at any time during normal working hours of entering and investigating the use of the Property to determine whether or not the requirements of the building and zoning regulations and the conditions herein-agreed to are being complied with.

These restrictions during their lifetimes shall be for the benefit of, and limitation upon, all present and future owners of the Property and for the public welfare.

This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded in the public records of Dade County, Florida.

These covenants contained in this Declaration are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 20 years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument has been recorded agreeing to change the Declaration in whole, or in part.

This Declaration may be modified, amended or released as to the Property, or any portion thereof, by a written instrument executed by the then owner of the fee simple title of such lands petitioning such modification, amendment or release, provided that the same is also approved by the Board of County Commissioners of Metropolitan Dade County, Florida, after public hearing.

Should this Declaration be so modified, amended or released, the Director of the Dade County Building and Zoning Department, or the executive officer of the successor of such Department, or in the absence of such director or executive officer, by his assistant in charge of the Department in his

absence shall, forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

13359: 1989

Enforcement shall be by action at law or in equity against any parties or persons violating, or attempting to violate, any covenants, either to restrain violation or to recover damages. The prevailing party in this action, or suit, shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available under law.

Invalidation of any one of these covenants, by judgment or Court, in no way shall affect any of the other provisions which shall remain in full force and effect.

Signed, sealed, executed and acknowledged this 30 day of July, 1987.

WITNESSES:

THE HAVEN CENTER, INC.

[Handwritten signatures]

By: *John J. Mastey*
Attest: *[Signature]*
Its: *SECRETARY*

STATE OF FLORIDA }
COUNTY OF DADE }

HEREBY certify that on this day before me, a Notary Public duly authorized in the state and county named above to take acknowledgments, personally appeared John Mastey and David Bailey Esq. to me known to be the persons described as President and Secretary of The Haven Center, Inc., a Florida corporation who executed the foregoing instrument, and acknowledged before me that such persons executed the said instrument in the name of and for that corporation, affixing the corporate seal of that corporation thereto, that as such corporate officers such persons are duly authorized by that corporation to do so, and that the foregoing instrument is the act of that corporation.

WITNESS my hand and official seal in the county and state named above this 30 day of July, A.D. 1987.

Kathleen Madford
Notary Public in and for the State of Florida at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
COMMISSION EXPIRES MAY 1, 1990

EXHIBIT C
Landlord's Estoppel Certificate

Re: Amended and Restated Lease Agreement dated _____, 20____ (the "Lease"), by and between Miami-Dade County (hereinafter "Landlord"), and The Seed Foundation, Inc., a Washington D.C. not-for-profit corporation (hereinafter "Tenant").

Ladies and Gentlemen:

Landlord has been advised that _____ ("Lender") intends to make a loan to Tenant (the "Loan") in connection with the Premises described in the Lease, and that, in making the Loan, Lender will act in material reliance upon this Estoppel Certificate from Landlord. Landlord hereby certifies, represents, warrants, acknowledges and agrees as follows:

1. A true, complete and correct copy of the Lease is attached to this Estoppel Certificate. Which Lease is marked as Exhibit "A", and is incorporated herein by reference. There have been no amendments, modifications, extensions, renewals or replacements of the Lease (other than as attached hereto).

2. Other than those contained in writing in the Lease, Tenant has made no representations, warranties or covenants to or in favor of Landlord with respect to the Premises or the Project.

3. The Lease is in full force and effect. Tenant has accepted the Premises, presently is in possession of same, and is paying the Rent specified in the Lease on a current basis as of [date]. Landlord has no knowledge of any set offs, claims or defenses to the enforcement of the Lease or Tenant's rights thereunder (except as expressed hereunder or attached hereto).

4. To Landlord's knowledge, neither Tenant nor Landlord is in default or breach under the Lease, and no event has occurred or condition exists which, with the giving of notice or passage of time, or both, could result in an event of default or breach under the Lease by either party (except as expressed hereunder or attached hereto).

5. As of [date], Rent is as specified in Exhibit "A" hereto. No Rent has been paid by Tenant in advance under the Lease (except as expressed hereunder or attached hereto).

6. Landlord has no knowledge of any present condition or event that may give rise to a violation of any federal, state, county or municipal law, regulation, ordinance, statute, rule, order or directive applicable to the Lease, the Premises or the Project (except as expressed hereunder or attached hereto).

Except as otherwise expressly defined in this Estoppel Certificate, all capitalized and/or defined terms when used herein will have the same meanings as given such terms in the Lease. This Certificate may be delivered by Landlord by facsimile or telecopier signature.

Dated this ___ day of _____.
Very truly yours

EXHIBIT D

ART IN PUBLIC PLACES (APP) PROCEDURES

SUMMARY

The Art in Public Places (APP) program is a requirement for all capital projects of Miami-Dade County and each municipality in Miami-Dade County that develop new government buildings that shelter people in a wholly or partially enclosed manner and serve a public purpose. The County Code requires that 1½ % of the construction cost of new government buildings be dedicated to public art projects through the APP program. This procedure explains how to work with the Department of Cultural Affairs to implement the APP requirement and also covers the processes to follow for maintenance, repair and inventory of public art works. There is a section that describes the procedures for municipalities to comply with the APP requirement and for private sector capital development on land owned by local government or on private property with the building owned by local government. In addition, there is a section containing the procedures for accessioning and deaccessioning artworks in the Public Art Collection. There is a "Frequently Asked Questions" section that is based on a series of opinions issued by the Office of the County Attorney to help clarify the requirements of the APP program.

PROCEDURE

General Information for Implementing APP Projects

1. Contact the Department of Cultural Affairs to set up a meeting to confirm the eligibility of the capital project for the APP and to review a complete capital budget for the project and perform an accurate calculation of the APP contribution.
2. All capital costs are included in the calculation of the 1½% APP allocation, including but not limited to:
 - architectural and engineering fees;
 - specialty consulting fees;
 - construction costs (including all systems and features that make a facility functional);
 - site work; and
 - allowance accounts (e.g., permitting, surveying, inspections)
 - contingency allowance.The only exclusions are land acquisition and subsequent changes to the construction contract through change orders.
3. Departments convey funds to APP from the moment the department receives spending authority for the capital project. APP will work with department to determine the best approach and timing for the conveyance of the funds to the Department of Cultural Affairs.
4. APP funds are used by the Department of Cultural Affairs for commissioning works of art, APP program administrative costs, and repair and maintenance expenses.
5. Municipal, state, federal, private and other non-County funds for a capital project are subject to the 1½% public art requirement.
6. APP may use funds generated from a construction project for acquisition of art works for other government facilities throughout the County. Every effort is made to use funds generated by a department's project within that department.

7. Projects done through development agreements (i.e., the County contracts with another party to develop a building that the County will own now or in the future) are subject to the APP requirement.
 - Development agreements must include language provided by APP regarding the requirement to transfer public art funds to Art in Public Places.

Tools for Departments to Implement APP

1. A completed APP Capital Project Budget Allocation Worksheet must be submitted by departments to the Department of Cultural Affairs as soon as a capital project budget is developed. APP staff will confirm the accuracy of the calculation of the APP requirement for the project (see sample "APP Capital Budget Allocation Worksheet" on page 13; this form is available from APP staff).
2. APP will provide appropriate language to departments for inclusion under the "General Conditions Section 01042 - Art in Public Places Coordination" of the departments' capital projects contracts with architects, engineers, consultants, outside project management services, construction and development agreements.
3. Examples of prior APP projects, the list of members of the APP Trust and other APP background information can be found at www.miamidadearts.org.

The APP Artists Selection Process

1. APP works collaboratively with departments on developing the artists' selection process:
 - To identify opportunities for public art in a project (with departments' project managers, planners and architects);
 - To understand the unique features of the department's capital project (e.g., community impact, timetable requirements, etc.); and
 - To draft the "Call to Artists" (i.e., the APP request for artists' qualifications and/or proposals).
2. An APP Professional Advisory Committee (PAC) is convened to review artists' submissions and to make commission recommendations to the APP Trust. Committee members are arts professionals appointed by the APP Trust.
 - Departments attend and participate in the PAC selection process (especially, project managers/architects/engineers and representatives from the specific users of the building).
 - Community representatives can participate at the departments' and APP's discretion.
 - The size and scope of the project helps determine the opportunities identified for public art and the number of artists that may be selected to work on a project.
3. The PAC's recommendations of artists are approved and finalized by the Art in Public Places Trust (a 15-member board appointed by the Board of County Commissioners).
4. APP staff manages the work of the selected artists and closely coordinates this work with departments' project managers, architects/engineers/specialty consultants and contractors.

Keys to Successful APP Projects

1. Calculation of APP project funds must be done in consultation and concurrence with APP staff and based on actual A&E, consultants' and contractors' contract awards.
2. It is essential to contact APP as soon as capital project planning begins so that the timetable for the artists' selection process can be coordinated with the overall project's early design work.

3. Departments' full involvement with APP in identifying opportunities for art works, participating in the selection process and developing the art projects helps ensure that departments' needs can be addressed.
4. Departments must include APP requirements in all capital projects agreements and contracts.
5. Representatives from departments must be identified for clear, consistent and regular communication and coordination with APP staff for each stage of the work - planning, A&E selection, design, construction and commissioning; these representatives must have direct access to decision-making authority for APP issues.
6. Departments must keep APP fully informed of capital project developments and especially of changes in order to avoid additional APP costs (e.g., redesign of art works, artists' delay claims, storage costs for art works, etc.); costs associated with failure to communicate with APP are the responsibility of the department.
7. The APP project manager must be included on the department's project management team, the artist(s) on the A&E team and the artist's fabricator/installer on the contractor's team; this is essential to ensure that departments' capital projects and the development of art works remain interlocked (e.g., planning, design and construction of the building is coordinated closely with the development and installation of the art work).

Maintenance

1. Art in Public Places will dedicate 15% of all new public art allocations to a repair and maintenance fund that will be utilized for specialized tasks required to restore and/or repair works of art in its collection (i.e., these funds are allocated from within the 1½ % of APP funds generated by the capital project). These funds will be replenished on an ongoing basis with proceeds from new commissions.
2. Maintenance requirements of the commissioned artwork are discussed and coordinated with the department in advance of the project completion to ensure the long-term care of the work.
3. Contact APP before undertaking maintenance and/or repair of any art work. Works of art may require specialized treatment for upkeep and qualified professionals for maintenance.
4. When a work of art is designed as an integrated part of a building, it simply may require that the department conduct standard cleaning procedures. For example, an artist-designed terrazzo floor typically requires the same kind of maintenance as a regular terrazzo floor and the department is responsible for doing the maintenance. Please call APP if there is any question about the care of a department's integrated art work.
5. Art works fabricated from special materials may require specialized maintenance treatment. For example, a bronze or stone work of art must be cleaned and treated with a specific maintenance product of a certain brand. Please call APP for guidance regarding the maintenance of art works made of special materials.
6. It is the departments' responsibility to train cleaning crews regarding the treatment of public art works to ensure proper care; APP is available to provide guidance for this training.

Repair

1. Never attempt to repair an art work.
2. Contact APP immediately to report any damage to an art work and an APP staff member will be responsible for assessing the damage and determining the repair procedures.

Inventory: Departments' Responsibilities

1. Departments are responsible for conducting an annual inventory of their public art works and for reporting the results to APP.
2. Departments must appoint an APP liaison responsible for the annual inventory and annually inform APP regarding contact information for this individual.
3. Departments cannot move or relocate works of art; APP must be contacted if a department wants to move or relocate a work of art.

Inventory: APP's Responsibilities

1. APP annually will provide departments with a list of the art works and locations of the works in the departments to initiate the annual inventory.
2. APP will provide departments with contact information for its Collections Manager who is responsible for the inventory results.
3. APP will respond to departments' requests to move or relocate art works.

Information for Municipalities to Implement APP Projects

1. Municipal governments are required to implement the APP provision set forth in the County Code.
2. Municipalities have the option of administering their own public art projects or working collaboratively with Miami-Dade Art in Public Places to administer, manage and implement the public art projects.
3. If the municipality chooses to implement its own public art projects, it is responsible for adhering to the program's requirements, as outlined in these procedures and highlighted as follows:
 - 1½% of the total capital cost of new government buildings must be allocated for the commission or purchase of artworks as defined in these procedures;
 - a competitive, quality-based artist selection process must take place and a selection committee with knowledge and expertise in the visual arts must select the art work;
 - APP funds must be used solely for commissioning works of public art and a professional artist must be contracted with to implement the public art project;
 - a percentage of the APP funds may be set aside for program administrative costs and repair and maintenance expenses for the public art project. It is recommended that up to 15% of the total public art allocation be set aside for costs associated with administering the project and up to 15% be set aside for costs associated with the future maintenance of the public art project;
 - Miami-Dade County Department of Cultural Affairs and its APP staff are available to work with municipalities to assist them and confirm that they are meeting the APP program's requirements;
 - for General Obligation Bond-funded (GOB) projects, APP funds must be spent within the project that generates the APP funds; and
 - if a municipality chooses to implement its own public art projects, but requires the technical assistance of Miami-Dade County APP, a negotiated administrative fee can be determined based upon the complexity and duration of the project.
4. If the municipality chooses to work collaboratively with Miami-Dade APP to implement the public art requirements, Miami-Dade APP will oversee and provide services, highlighted as follows:

- work collaboratively with the municipality and its project team to identify opportunities for public art in the facility;
 - draft and distribute Call to Artists;
 - administer artist selection process;
 - coordinate the submission of the recommended artist(s) to the Miami-Dade APP Trust;
 - provide contract language for municipality's architect and contractor contracts to ensure APP coordination;
 - provide technical assistance to the selected artist(s) and serve as liaison between the artist(s) and commissioning municipality and its project team;
 - manage contract negotiations and process payments with artist(s);
 - coordinate installation of art work(s) with the municipality's project managers, architects/engineers/specialty consultants and contractor;
 - if a municipality chooses to work collaboratively with Miami-Dade APP, 15% of the total public art funds will be allocated to Miami-Dade Department of Cultural Affairs for costs associated with its administration of the public art project; and
 - if required by the municipality, the selected artist(s)/artwork(s), along with an alternate recommendation, will be presented to and reviewed by the municipality's governing body prior to the final approval of the Miami-Dade APP Trust.
5. Municipalities will own the resulting public art works and will be responsible for the maintenance, repair (as necessary), and inventorying of public art works. Municipalities can consult with Miami-Dade APP for assistance with these responsibilities.

Information for Private Sector Capital Development on Land Owned by Local Government or on Private Property with the Building Owned by Local Government

1. Capital projects done through agreements with a private entity, including but not limited to leases or development agreements (i.e., the local government contracts with another party to develop a building that the local government will own now or in the future), are subject to the APP requirement if:
 - The project meets the eligibility criteria for the public art requirement (e.g., it is a building that shelters people in a wholly or partially enclosed manner); and
 - The project serves a public purpose whether operated by local government or on its behalf, by a private operator; and/or
 - The project relies on surrounding or adjacent local government buildings to function and is an integral component of the overall infrastructure of a public complex (e.g., a cargo facility at the airport); and/or
 - The project enhances a patron experience at a local government facility (e.g., a restaurant).
2. Capital projects that are done through agreements with a private entity, including but not limited to leases or development agreements (i.e., the local government contracts with another party to develop a building that the local government will own now or in the future), to be operated by the private entity, may not be eligible for the art in public places requirement if:
 - The agreement between the local government and the private entity for the private entity to operate the project has a term in excess of 50 years; and/or
 - The agreement between the local government and the private entity has a provision that allows the private entity the option to purchase the facility; and/or
 - There is no local government funding and/or no local government rent abatements or reductions provided to the private entity; and/or

- The project has no public purpose and is not part of a complex of surrounding or adjacent local government buildings that function as a public complex and/or does not enhance a patron experience at a local government facility.
- 3. Capital projects that include complexes in which one or more of the buildings and/or a portion of a building meet the criteria for the APP requirement may need to comply with the APP requirement for those eligible buildings and/or eligible portions of the building (e.g., a public parking garage built as a part of a private development complex that otherwise may not be subject to the APP requirement).
- 4. Determinations as to the applicability of the public art requirement initially are made by the Director of the Miami-Dade Department of Cultural Affairs, are based on the section 2-11.15 of the County Code, Administrative Order 3-11 and the Miami-Dade Procedures Manual (Procedure No. 358), and may be considered by the Review Committee as set forth in Administrative Order 3-11, prior to consideration of the Board of County Commissioners.

Accession Procedures

1. Accessioning is the formal acceptance of an artwork into the Miami-Dade County Art in Public Places Collection (Collection). Accessioning artwork into the Collection indicates the intent to apply professional standards of care, display, and maintenance over the life of the artwork, or until the artwork is no longer displayable and is deaccessioned from the Collection.
2. Artworks will be entered into the Collection inventory as soon as a commissioning or purchasing contract is executed and these inventory entries will be annotated as "works in progress" with periodic updates included as necessary to describe the status of completion accurately. Artworks will be annotated as fully accessioned in the Collection inventory only upon completion of all facets of the commissioning or purchasing contract or of the required review process for gifts and other artworks. Conditions, restrictions, or limitations cannot be attached to the accessioning that would limit the use of the artwork.
3. The signed contract transferring title for the artwork and clearly defining the rights and responsibilities of all parties will accompany every acquisition.
4. Acquisitions result from:
 - Projects of the Miami-Dade County Art in Public Places Program pursuant to Section 2.11.15 of the Miami-Dade County Code;
 - Gifts with a fair market value greater than \$1,000, which will be reviewed and accessioned in accordance with the Miami-Dade County Administrative Order No. 1-3;
 - Gifts with a fair market value less than \$1,000 that are reviewed and accepted by the Art in Public Places Trust; or
 - Other artworks, including but not limited to found items that are un-accessioned items found in the existing Collection or in the possession of Miami-Dade County government that are reviewed and accepted by the Art in Public Places Trust.
5. All acquisitions will be entered into the Collection inventory and added to the General Services Administration (GSA) Capital Inventory Record.
6. Once the Art in Public Places program takes possession of an artwork, it should have the sole right to determine how and when that artwork is shown, safeguarded, or deaccessioned, subject to its professional practices and policies and in accordance with County policy.

Deaccession Procedures

1. The deaccessioning of artwork is the removal of an object from the Miami-Dade County Art in Public Places Collection. This includes the removal of the artwork from its public site, removal from the maintenance cycle, and moving of records, both hard copy and electronic, into a Deaccessioned Collection file and as required by Miami-Dade County Administrative Order No. 8-2, transferred into the archived portion of the GSA Capital Inventory Record. Deaccessioning will be considered only after a careful evaluation of the artwork within the context of the Collection as a whole and will be consistent with Miami-Dade County Administrative Order No. 8-2 – Care, Control and Disposal of County Property. Only the Miami-Dade County Art in Public Places Trust has the authority to deaccession artworks in the Art in Public Places Collection.
2. Once an artwork has been accessioned, it may not be deaccessioned on the basis of content.
3. An artwork may be considered for deaccession under the following conditions only:
 - The artwork cannot be located after reasonable and diligent searches. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for unlocated artwork(s) and an investigation report and recommendation must be submitted to GSA;
 - The artwork has been damaged beyond repair, damaged to the extent that it no longer represents the artist's intent, or damaged to the extent that the expenses of restoration and repair are found to equal or exceed current market value of the artwork. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for damaged or destroyed artwork(s) and an investigation report and recommendation must be submitted to GSA;
 - The artwork is not, or is only rarely, on display due to lack of a suitable site;
 - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is structurally or otherwise altered and can no longer accommodate the artwork, is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or has its surrounding environment altered in a way that significantly and adversely impacts the artwork;
 - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County;
 - The artwork was purchased as a semi-permanent acquisition and the County's predetermined period of obligation is terminated;
 - There is a documented history of incident(s) that shows the artwork is a threat to public safety;
 - The artist legally exercises the right of disassociation granted by the Visual Artists Rights Act of 1990, preventing the use of his or her name as the creator of the artwork;
 - The artwork requires excessive maintenance and/or the condition or security of the artwork cannot be reasonably guaranteed;
 - The artwork has been determined by the Art in Public Places Trust deaccession process to be of inferior quality relative to the quality of other works in the Collection or the County wishes to replace the artwork with a work of more significance by the same artist; and/or
 - At the time of accessioning, complete information on the provenance of the artwork was not available, or more information has since become available, indicating that the artwork should not be part of the Miami-Dade County Art in Public Places Collection.
4. Department of Cultural Affairs staff will prepare a written recommendation for deaccession of artworks from the Collection based on one or more of the conditions in Section 3 above for

review and evaluation by the Miami-Dade County Art in Public Places Professional Advisory Committee (Professional Advisory Committee), and subsequent review, evaluation and action by the Art in Public Places Trust. The staff reserves the option of hiring a consultant for advice on specific elements of the artwork being considered through the deaccession process.

5. Artists whose work is being considered for deaccession shall be notified by mail using the current address provided by the artist. Artists also shall be notified of the recommendation of the Professional Advisory Committee and of the Art in Public Places Trust meeting scheduled to consider this recommendation.
6. All legal documents relating to the artwork, including but not limited to contracts with the artist and agreements related to a donation of the artwork as applicable, will be consulted as part of the deaccession process. When applicable and feasible, the donor of an artwork under consideration for deaccessioning will be notified.
7. At a Professional Advisory Committee meeting, Miami-Dade County Department of Cultural Affairs staff will present reports on artworks to consider for deaccession that include:
 - Reasons for the suggested deaccession accompanied by such other documentation and information as may be relevant;
 - Acquisition method, cost, and estimated current market value;
 - Documentation of correspondence with the artist;
 - Photo documentation of site conditions (if applicable);
 - In the case of damage, a report that includes the official police and investigation reports and recommendation, and documents the original cost of the artwork, estimated market value, and the estimated cost of repair; and/or
 - In the case of theft or loss, the official police and investigation report and recommendation, including when possible, a report prepared by the agency responsible for the site of the loss.
8. The Professional Advisory Committee will then make a recommendation to the Miami-Dade County Art in Public Places Trust, including actions regarding the disposition of the artwork pursuant to Section 9 below. If the Professional Advisory Committee recommends that an artwork be retained, an explanation stating the Committee's reasons and recommendations shall be set forth in the minutes of the Committee's meeting and shall be submitted to the Art in Public Places Trust. The Trust may decide to seek additional information.
9. The decision to deaccession artwork will result from a resolution requiring a majority vote by the Miami-Dade County Art in Public Places Trust. Upon this decision to deaccession artwork, the Trust will consider what action should be taken, with priority given to public benefit from the Collection. Every step will be taken to arrive at a mutual balance between observing the rights of the artist and public benefit. Actions will be consistent with Miami-Dade County Administrative Order No. 8-2 and may include:
 - Trade through artist, gallery, museum, or other institutions for one or more other artwork(s) of comparable value by the same artist or to reduce the purchase price of a replacement artwork;
 - Long term or permanent loan offered first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
 - Donation first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
 - Sale to interested potential bidders with "first offer" right to governmental units located within Miami-Dade County, in compliance with Administrative Order No. 8-2 governing

- surplus County property. Any pre-existing contractual agreements between the artist and the County regarding resale shall be honored, including but not limited to the original artist's having first right of refusal to purchase his or her artwork at its current market value;
- In special situations, the Miami-Dade County Art in Public Places can negotiate the transfer of an artwork to another entity. For site-integrated or site-specific artworks, when the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County, the ownership of the artwork can transfer to that entity. Artwork in the Public Art Collection should be in exhibitable condition and continue to reflect the artist's original intent. Should the artwork selected for transfer need to be repaired, cleaned, or restored, the negotiated transfer will include conservation provisions and, unless negotiated otherwise, the receiving entity pays for the restoration. The receiving entity should have an art plan that defines their commitment to the artist and the continued care of the artwork; and/or
 - For artwork(s) not able to be disposed of by the methods outlined above, destruction or recycling of materials comprising the artwork, in accordance with Chapter 274 of the Florida Statutes, so that no piece is recognizable as part of that artwork.
10. In the event the artist disagrees with the decision of the Miami-Dade County Art in Public Places Trust, the artist may request reconsideration of the deaccession. This request must be filed in writing with the Miami-Dade County Department of Cultural Affairs within 30 days of the Trust's deaccession decision, and it must be based on information that was not considered during the Professional Advisory Committee's and the Art in Public Places Trust's meetings on the deaccession.
 11. The Miami-Dade County Department of Cultural Affairs will work cooperatively with the General Services Administration, Fixed Assets & Division Operations section of the County regarding the implementation of this policy for deaccessioned artworks and will notify GSA about all actions under formal consideration and taken by the Miami-Dade County Art in Public Places Trust affecting artwork(s) in the County's inventory.
 12. A report will be sent to the County Mayor, Board of County Commissioners, County Manager and GSA regarding the Miami-Dade County Art in Public Places Trust's action(s) regarding deaccessioned artworks.
 13. The artwork, or its remains, shall be disposed of by the Miami-Dade County Art in Public Places staff, or its agents, upon deaccession action. It is the obligation of the Miami-Dade County Art in Public Places Program to ensure that all disposals with regard to the Collection be formally and publicly conducted and adequately documented in accordance with applicable provisions of the Florida Statutes and the Code of Miami-Dade County utilizing a variety of disposal methodologies.
 14. A permanent record of the artwork's inclusion in the Miami-Dade County Art in Public Places Collection, and reasons for its removal, shall be maintained in a Deaccessioned Collection file, and will be kept as a separate section of the Miami-Dade County Art in Public Places Collection records. Miami-Dade County Department of Cultural Affairs staff will notify GSA Fixed Assets & Division Operations section of all deaccessioned artwork(s) so that the artwork(s) can be deleted from the Department's Capital Inventory Record.
 15. No artworks shall be sold or traded to a member of a governing body or staff of Miami-Dade County government including the members of the Miami-Dade County Art in Public Places Trust and its Professional Advisory Committee, consistent with Miami-Dade County conflict of interest policies.
 16. All proceeds from the sale of any artwork from the Miami-Dade County Art in Public Places Collection shall be deposited in the Art in Public Places Trust Fund. Funds from artwork

sales may be used in any manner consistent with the enabling legislation of the Art in Public Places program and County policies regarding public artwork.

Frequently Asked Questions

1. Applicable Projects and Costs.
 - What if we are uncertain about whether the APP requirement applies to a project or components of a project?
 - Call the APP staff if you have any questions about the APP requirements. In addition, the FAQs below may provide answers to your questions.
2. Contingency Allowances.
 - Are contingency allowances covered by the APP requirement, even if eventually they are not used or fully used for the project.
 - Yes. The APP allocation is calculated and transferred to APP upon the award of the contract.
3. Inspector General.
 - In calculating the APP allocation, should the Inspector General cost be included in the base for the APP calculation?
 - Yes, the APP calculation is taken against the total contract amount.
4. Capital Outlay Reserve Funds (CORF).
 - Are construction projects funded by the Capital Outlay Reserve Fund covered by the APP requirement?
 - Yes. The APP requirement applies to all County construction projects for new buildings.
5. Funding Sources That Disallow Public Art.
 - Does the APP requirement apply to construction projects that are funded by grants or other sources which disallow public art?
 - If a grant or another funding source specifically prohibits the use of funds for compliance with the APP requirement, the department must use other funds to satisfy the APP requirement.
6. General Obligation Bond (GOB) Projects.
 - Does the APP requirement apply to GOB projects?
 - Yes, the APP requirement applies to all County construction projects for new buildings. In addition, the APP requirement applies to GOB projects for new buildings done by municipal governments.
7. Capital Work Done by the County.
 - Does the APP requirement apply to the cost of architectural and engineering services performed by County personnel and to the cost of in-house construction labor, materials, and/or machinery?
 - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project.
8. Private Sector-Funded Projects.
 - Does the APP requirement apply to buildings financed and constructed on County property by private sector investors?
 - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project. Please see the section, "Information for Private Sector Capital Development on Land Owned by Local Government or on Private Property with the Building Owned by Local Government."
 - What happens if the APP funds are not included in the development agreement with the private sector and/or are not collected by the department from the private sector?

- The department will need to convey the funds for the APP requirement from another revenue source.
9. Conveyance of APP Funds.
- When are funds conveyed to APP? Whom do we contact for details about conveying funds?
 - Funds are conveyed to APP when the department receives spending authority for the capital project. For example, when an A&E contract is authorized, 1 ½% of the contract must be conveyed to APP. Please contact Deborah Margol, Deputy Director, Department of Cultural Affairs, for instructions to convey funds (305-375-2577; debo@miamidade.gov).
10. Demolition.
- Does the APP requirement apply to demolition costs?
 - Yes, if demolition is part of a construction project that is covered by the APP requirements.
11. Building Additions.
- Are additions to an existing structure covered by the APP requirement?
 - Yes, additions are considered to be "new government buildings."
12. Equipment.
- Are equipment costs subject to the APP requirement?
 - Yes. The APP requirement covers all systems and features that make a facility functional, even if the equipment is acquired through a separate contract.
13. Parking Garages.
- Does the APP requirement apply to a parking garage?
 - Yes.
14. Roadways and Sidewalks.
- Does the APP requirement apply to roadways and sidewalks?
 - Yes, if the roadways and sidewalks are part of a construction project that is covered by the APP requirement.
15. Selection of Art Must Be by APP.
- Can a department satisfy the APP requirement by selecting and purchasing an artwork itself?
 - No. Works of art must be selected in compliance with the process required by the APP program and overseen by the APP Trust and staff. Please see the section, "The APP Artists Selection Process" on page 2.
16. Adherence to the Art in Public Places Requirement.
- Can departments waive the APP requirement?
 - No. Section 2-11.15 of the Miami-Dade County Code sets forth the requirements for the APP program and provides that only the Board of County Commissioners has the authority to waive the APP requirement. Administrative Order 3-11 prescribes a process involving a Review Committee which can be convened by the Assistant County Manager in charge of the APP program to conduct a hearing of a request for a waiver and states that the Review Committee will evaluate such requests as follows: "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."
17. Unsuitable Locations.
- Does the APP requirement apply to a new building that may not provide a suitable location for a public artwork and may the APP funds be transferred for expenditure to another site?

- Yes. The APP requirement covers all new government buildings. There is no requirement in Section 2-11.15 of the Miami-Dade County Code that artworks be located at the site of the project that funded the artwork. APP will work with departments to identify suitable alternative locations.

18. Donations of Artwork.

- What is the process for departments to accept donations of art work(s)?
- The process for accepting gifts of art works is covered by Administrative Order No. 1-3. It requires that the APP Trust and Its Professional Advisory Committee review and provide the department with a recommendation for all donations of artwork or commemorative and/or memorial structures of artistic merit, valued in excess of \$1,000.

CONTACT(S):

Department/Division

Department of Cultural Affairs

REFERENCE DOCUMENT(S):

Section 2-11.15 of the Miami-Dade County Code

Administrative Order 3-11, Art in Public Places Program Implementation and Fund Transfer Procedure; Administrative Order No. 8-2, Care, Control and Disposal of County Property; Miami-Dade County Administrative Orders No. 1-3, Gifts to the County

Copies of all County Attorney Opinions related to these procedures are maintained by the Department of Cultural Affairs

APP Capital Project Budget Allocation Worksheet
(Sample; Please request this form from APP staff)

Capital Project Name	Project No.	Submittal Date	Submitted by
Department		Project Start Date	Project End Date
Brief Description			

Design & Admin Costs

Item	Description	Estimated Cost	Actual Award Cost
A.	Professional Basic Fees (A/E Consultants)	\$	\$
B.	Specialty Consultants, Reimbursable Allowances, Soil Boring Testing, Surveying, Inspector General, etc	\$	\$
C.	Program Management (Project and Construction Management)	\$	\$
D.	Other Costs	\$	\$
	CATEGORY TOTAL (A thru D)	\$	\$

Construction Costs

Item	Description	Estimated Cost	Actual Award Cost
E.	New Construction	\$	\$
F.	Demolition	\$	\$
G.	Built-in Equipment (such as moving escalators and walkways, elevators, fire & security alarm, IT, back up generators, etc)	\$	\$
H.	Furnishings, Fixtures, and Non-Integral Equipment	\$	\$
I.	All Civil Related Work (such as landscape, sidewalks, surface lot, roadway, pavement, lighting, etc)	\$	\$
J.	Environmental Remediation	\$	\$
K.	Allowance Accounts (e.g. permitting, threshold inspections, reimbursables, alternates, etc.)	\$	\$
L.	Contingency Account	\$	\$
	CATEGORY TOTAL (E thru L)	\$	\$

	Estimated Cost	Actual Award Cost
Design & Admin Total	\$	\$
Construction Total	\$	\$
Total Eligible Costs	\$	\$

Estimated Amount of APP Allocation (1.5%)	\$	
Actual Amount of APP Allocation (1.5%)		\$

The above-referenced line items are not intended to be an all inclusive list of project expenses required to contribute to the APP allocation. These represent the most common expenses called out in eligible County capital projects. All capital expenses must be included on this form. Please contact Art in Public Places for questions about this form.

**Schedule 4.01
(form)**

CONFIRMATION OF COMMENCEMENT DATE

Reference is made to The SEED Foundation, Inc., in the Amended and Restated Lease Agreement dated _____, 20__, by and between Miami-Dade County, acting by and through the department of Community Action and Human Services Department ("Landlord" or "CAHSD"), and The SEED Foundation, Inc., a Washington, D.C. not-for-profit corporation ("Tenant"). This Confirmation of Commencement Date ("Confirmation of Commencement") is attached to the Lease as Schedule 4.01 thereto, and, when executed and delivered by Landlord to the Tenant shall be incorporated within and made a part of the Lease. Capitalized terms used in this Confirmation of Commencement without otherwise being defined herein will have the meanings given to them in the Lease. The Confirmation Date of the Lease is _____, 20__. Further, the Expiration Date for the Lease is _____, 20__. To confirm the Commencement Date as well as the Expiration Date, the Landlord has caused this instrument to be executed and delivered to the Tenant, defining the Commencement Date and the Expiration Date of the Lease.

ATTEST:
HARVEY RUVIN, CLERK

Florida

By: _____

COUNTY:
MIAMI-DADE COUNTY, a political
subdivision of the State of

BY ITS BOARD OF COUNTY
COMMISSIONERS

By:
