

**RESTATED SETTLEMENT AGREEMENT**

THIS AGREEMENT, made and entered into this 9<sup>th</sup> day of December, 2009, by and between THE CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (hereinafter called the "CITY" or the "LESSOR"), and the SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic of the State of Florida (hereinafter called the "SCHOOL BOARD" or the "LESSEE"), collectively the "Parties".

**WITNESSETH**

WHEREAS, the CITY and the SCHOOL BOARD have entered into a JOINT USE AGREEMENT and a CONSTRUCTION AGREEMENT, both dated the 20th day of January, 1994, attached hereto as Exhibit "A" and Exhibit "B" respectively, regarding the property known as POLO PARK; and

WHEREAS, those agreements deal with certain improvements to be made on, and joint usage of POLO PARK; and

WHEREAS, disagreements have arisen concerning the proper construction of the tennis courts by the SCHOOL BOARD, and the CITY has not accepted possession of said improvements under the terms of the CONSTRUCTION AGREEMENT; and

WHEREAS, the CITY and the SCHOOL BOARD entered into a SETTLEMENT AGREEMENT dated the 1<sup>st</sup> day of December 2002, which was intended to resolve these disagreements, complete the SCHOOL BOARD'S obligations under the CONSTRUCTION AGREEMENT, and allow the Parties to operate under the terms of the JOINT USE AGREEMENT; and

WHEREAS, as a part of the SETTLEMENT AGREEMENT, the SCHOOL BOARD agreed to pay to the CITY the amount of \$85,000, as settlement of all issues between the Parties; and

WHEREAS, after further negotiations, the Parties have now agreed to restate the SETTLEMENT AGREEMENT in compliance with the terms and conditions provided herein, in order to provide a revised framework for the final settlement of all outstanding claims, disputes, disagreements and conflicts whatsoever between the Parties pertaining to the Construction Agreement; and

WHEREAS, it is the Parties intent that this restated SETTLEMENT AGREEMENT supersede and replace the above described SETTLEMENT AGREEMENT; and

WHEREAS, the SCHOOL BOARD, pursuant to Agenda Item F-3, Board Action # 113,174, at its meeting of November 17, 2009, authorized the Superintendent to finalize negotiations and execute this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I.

#### RECITALS

The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

II.

PAYMENT OF FUNDS BY THE SCHOOL BOARD

The CITY shall assume any and all responsibility for the repairs to the tennis courts, with the SCHOOL BOARD to provide the CITY Fifty Thousand Dollars (\$50,000), as its share of the repair cost. This amount shall augment the above mentioned Eighty-Five Thousand Dollars (\$85,000), previously authorized by the SCHOOL BOARD in 2002 but not yet paid.

III.

ACCEPTANCE OF IMPROVEMENTS

The Parties agree that, upon payment to the CITY by the SCHOOL BOARD of the amounts of Eighty Five Thousand Dollars (\$85,000) and Fifty Thousand Dollars (\$50,000), totaling One Hundred and Thirty Five Thousand Dollars (\$135,000), the CITY shall deem all work required to be performed by the SCHOOL BOARD under the CONSTRUCTION AGREEMENT to be satisfactorily concluded and complete, and the improvements made by the SCHOOL BOARD to POLO PARK to be deemed accepted by the CITY. The SCHOOL BOARD shall remit the total amount of \$135,000 to the CITY within thirty (30) days of the CITY'S approval of this Agreement, and acceptance of the improvements to POLO PARK shall not be effective until such time as the funds are received by the CITY.

IV.

JOINT USE AGREEMENT

Concurrent with payment to the CITY by the SCHOOL BOARD of the funds enumerated in Article II, the Parties hereby ratify and affirm that the JOINT USE AGREEMENT remains in full force and effect.

V.

RESOLUTION OF CLAIMS

This Agreement settles and resolves all claims, disputes, disagreements and conflicts among and between the Parties arising from the CONSTRUCTION AGREEMENT, including, but not limited to all claims that were, or could have been raised by any Party to this dispute, and the CITY releases the SCHOOL BOARD from any and all claims and liabilities whatsoever relating to the Construction Agreement.

VI.

ATTORNEYS FEES

In the event of any litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this term shall survive the termination of this Agreement.

VII.

EFFECTIVE DATE

This Agreement shall become effective as of the date of full execution by both Parties.

IN WITNESS WHEREOF, the Parties hereto have individually, through their proper officials, executed this Agreement the day and year first hereinabove written.

