

## Shawn Smith

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**From:** Shawn Smith  
**Sent:** Monday, April 02, 2012 10:42 AM  
**To:** City Commission  
**Cc:** Jim Scholl; Larry Erskine  
**Subject:** Glynn Archer attachment

**Attachments:** School Board draft lease lease.doc

Mayor & Commissioners

As a follow-up to the document I sent you this morning, please find a draft lease. It is our standard agreement, modified for the School Board. The paragraphs that I envision being modified before execution include those dealing with insurance, bankruptcy, perhaps indemnity, and taxes. Also, the commencement date will likely change. It is my understanding that in order to eliminate additional traffic on the boulevard during reconstruction, we would execute the lease prior to the closing. If that is the case, the lease would reflect an initial term, with a subsequent extended term contingent upon the closing. With respect to the lease of dump property, the language of the acquisition contract provides ". Such use shall be pursuant to a long-term lease agreement in substantial conformity that attached hereto as exhibit "3". The City and School Board shall consider formal adoption of the lease agreement at a subsequent meeting prior to the Closing.



School Board  
draft lease lease...

This Instrument Prepared By and  
After Recording Return to:  
Larry R. Erskine  
Office of the City Attorney  
P.O. Box 1409  
Key West, Florida 33041

## **LEASE AGREEMENT**

**LANDLORD:**

**CITY OF KEY WEST, FLORIDA**

**TENANT:**

**THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA**

**PROPERTY:**

**ONE ACRE LOCATED ON STOCK ISLAND**

**DATE:**

\_\_\_\_\_, 2012

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **The SCHOOL BOARD OF MONROE COUNTY, FLORIDA**, whose address is 241 Trumbo Road, Key West, Florida 33040 (hereinafter "Tenant"), and the **CITY OF KEY WEST, FLORIDA**, a municipal corporation, whose address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "Landlord").

Whereas, the Tenant has commenced construction at the HOB campus for the relocation of a new elementary school for the students currently housed at Glynn R. Archer School; and

Whereas, the Tenant has indicated the Glynn R. Archer School site will be available once the School Board completes plans to relocate students to the new facility; and

Whereas, on November 2, 2010, 70.5% of the voters casting ballots authorized the Landlord of Key West to move forward with negotiations for the acquisition of the Glynn R. Archer School property; and

Whereas, the Tenant and Landlord have entered into an Agreement for the Conveyance of Real Property pertaining to the Glynn R. Archer School Property; and

Whereas, the said Agreement for the Conveyance of Real Property provides that the Landlord shall permit Tenant to utilize City property adjacent to the Gerald Adams School for the purpose of parking a specific number of Tenant's school buses; and

Whereas, the parties desire a written agreement between them providing the terms and conditions pertaining to the Tenant's use of the City's property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and the rent reserved by Landlord to be paid by Tenant, Landlord hereby leases and demises unto Tenant, and Tenant hereby does lease from Landlord, the Demised Premises, for the terms, and at the rentals, and upon the terms and conditions, hereinafter set forth:

### 1 - DEMISED PREMISES

1.1 **Landlord's Demise.** Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by the Tenant of the covenants and agreements, to be kept and performed by the Tenant, the Landlord does lease, let, and demise to the Tenant and the Tenant hereby leases from the Landlord, the described premises (the "Demised Premises"), situate, lying, and being in Monroe County, Florida, and more particularly described on Exhibit "A".

1.2 **Conditions.** The demise is made subject to the following:

(a) Conditions, easements, encumbrances, restrictions, limitations and any other matter of title, if any, now appearing of record;

(b) Zoning and regulatory ordinances of the City of Key West, the County of Monroe, State of Florida, and any other applicable governmental body now existing or which may hereafter exist by reason of any legal authority during the Term of this Lease;

(c) Any questions of survey, the Tenant having satisfied itself as to the boundary lines and contents of the Demised Premises and likewise having satisfied itself with the sufficiency of the present title of Landlord to the Demised Premises;

(d) The proper performance by the Tenant of all of the terms and conditions contained in this Lease.

## **2 - TERM**

2.1 **Commencement Date.** This Lease Agreement is expressly contingent upon, and shall commence upon, the date of the conveyance of the Glynn R. Archer School Property from Tenant to Landlord, if that event occurs. This Lease Agreement may be executed prior to the Commencement Date and will be effective upon execution by all Parties, but prior to the Commencement Date Tenant shall have no right to occupy the Demised Premises. Prior to the Commencement Date, Landlord may accompany Tenant, or its contractors or agents, whenever Tenant seeks to gain access to the Demised Premises. Neither this Lease Agreement nor any evidence thereof shall be recorded in the public records until the Commencement Date.

2.2 **Term.** The term of this Lease shall commence upon the Commencement Date as that term is defined in paragraph 2.1 above and shall terminate on the last day of the ninety-ninth (99th) year thereafter; provided, however, that this Lease Agreement may be terminated as provided herein.

## **3 - RENT**

3.1 During the term of this Lease, Tenant shall pay to Landlord, without demand, setoff, or deduction, except as expressly provided herein, annual rent equal to One Dollar (\$1.00), payable no later than the sixtieth day of each year of the term. Tenant may prepay the Rent.

3.2 **Manner of payment.** All amounts payable to Landlord pursuant to this Lease under this Section, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall constitute additional rent, be payable lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, each payment to be paid to Landlord at the address set forth herein or at such other place as Landlord shall from time to time designate. Tenant shall pay any and all taxes, including sales tax any local surcharge or other tax, on the Rent payable pursuant to this Lease in addition to the sums otherwise set forth herein.

3.3 **Net Lease.** It is intended that the Rent provided for in this Lease shall be absolutely net to Landlord throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, remediation, rebuilding, use or occupation thereof.

3.4 **Late Payments.** All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when due as provided for in this Lease shall bear interest at the highest rate allowable under Florida law from the time they become due until paid in full by Tenant. In addition, Tenant shall pay a late fee in the amount of ten (10%) percent of any amount due from Tenant to Landlord, which is not paid within ten (10) days of the due date for such payment as to any sums due for Rent and within thirty (30) days for any other sums due from Tenant pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the Parties hereto that said late fee should be for reimbursement to Landlord for collection charges incurred as a result of the overdue rent. Such late fee shall be in addition to any interest payable by Tenant as set herein from Tenant's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Landlord, Landlord shall be entitled to charge Tenant an administrative charge of Fifty Dollars (\$50.00) during the first ten (10) years of the Initial Term with the amount of the administrative fee increasing by One Dollar for each Lease Year thereafter. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said instrument being dishonored. Landlord's acceptance of late or partial payments shall not be construed to constitute a waiver of the remedies provided to Landlord herein pertaining to Tenant's breach.

3.5 **Non-Subordination.** Notwithstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Premises shall not be subordinated to any leasehold mortgage, lien or encumbrance of any nature whatsoever. Furthermore, the Landlord's right to receive payment under this Lease shall not be subordinated to any debt or equity financing, leasehold mortgage, lien, encumbrance or obligation of any nature whatsoever.

#### **4 - USE**

4.1 The Demised Premises shall be utilized by Tenant to park approximately \_\_\_ of Tenant's school buses, and for no other purpose.

4.2 **Compliance with Laws and Governmental Regulations.** Tenant shall comply with all Governmental Regulations pertaining to the Demised Premises and its operations thereon. Tenant shall immediately provide Landlord with any and all notices or allegations of noncompliance received from any governmental entity.

4.3 **Nuisances.** Tenant shall not make, suffer, or permit any unlawful, improper, or offensive use of the Demised Premises, or any part thereof, or permit any nuisance thereon. Tenant shall not permit rubbish, refuse, or garbage to accumulate, or any fire or health hazard to exist, upon

or about the Demised Premises. Tenant shall not suffer or permit any waste or mistreatment of the Demised Premises.

4.4 **Abandonment.** If at any time during the term of this Lease, Tenant abandons the Leased Premises or any part thereof, such abandonment shall be deemed a default under this Lease. If Landlord's right of re-entry is exercised following abandonment of the Demised Premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on or around the Demised Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so. For the purposes of this Lease, the Demised Premises shall be deemed to have been abandoned if Tenant is absent from the Leased Premises for thirty (30) consecutive business days.

## **5 - SURRENDER OF DEMISED PROPERTY**

5.1 Tenant shall, upon expiration or termination of the Term hereof, or any earlier termination of this Lease for any cause, surrender to Landlord the Demised Premises, including, without limitation, all alterations, improvements, and other additions thereto that have been made or installed by either Party in or upon the Demised Premises, in good and clean condition and repair, ordinary wear and tear excepted. Unless Landlord requests in writing no less than 6 months prior to the expiration or termination of the Term that all improvements located on the Demised premises be demolished and removed at Tenant's sole expense, all buildings, alterations, improvements and additions made to the Demised Premises by or for Tenant shall remain upon the Leased Premises at the expiration or earlier termination of this Lease and shall be the property of Landlord. Upon request, Tenant will execute and deliver to Landlord a document in recordable form acknowledging the term of the Lease has ended.

## **6 - QUIET ENJOYMENT**

6.1 Subject to the conditions and limitations of this Lease and other rights of Landlord described in this Lease, Landlord covenants that so long as Tenant pays the Rent reserved in this Lease and performs its agreements hereunder, Tenant shall have the right to quietly enjoy and use the Demised Premises for the term of this Lease.

## **7 - ASSIGNMENT AND SUBLEASING**

7.1 Tenant shall not assign this Lease Agreement or any right hereunder without first obtaining the express prior written consent of Landlord, which consent may be withheld for any reason or for no reason.

The consent by Landlord to any assignment or sublease shall not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease.

This Lease is freely assignable by the Landlord, and upon such assignment the Landlord's liability shall cease. The liability of the original Tenant executing this Lease shall continue after any assignment of this Lease or sublease. Any assignment or sublease in contravention hereof is void and shall be considered a default of this Lease.

## **8 - MAINTENANCE AND REPAIR**

8.1 **Tenant shall Maintain the Demised Premises.** Tenant shall be responsible, at Tenant's sole expense, to maintain the Demised Premises in good order. Further, Tenant will keep in good state of repair and in current condition, the Demised Premises and all furnishings brought or placed upon the Demised Premises by the Tenant. The Tenant will not suffer or permit any strip, waste, or neglect of any such personal property to be committed, and the Tenant will repair, replace, and renovate the premises and the personal property as often as it maybe necessary in order to keep the premises and personal property in good repair and condition.

## **9 - INSURANCE**

9.1 **Insurance.** From and after the Commencement Date, the Tenant will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks" "extended coverage," which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than full Replacement Cost value of the Demised Premises and all improvements thereon, and all of such policies of insurance shall include the name of the Landlord as an additional insured and loss payee and shall fully protect both the Landlord and the Tenant as their respective interests may appear. In the event of destruction of the said buildings or improvements by fire, flood, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to the Landlord and the Tenant, said sums so paid shall be deposited in a joint account of the Landlord and the Tenant, requiring signatures of both Tenant and Landlord for withdrawal, in a bank located in Monroe County, Florida designated by the Tenant, and shall be made available to the Tenant for the construction or repair, (including any modification to the improvements sought by the Tenant and approved in writing by the Landlord with Landlord's approval not unreasonably withheld) as the case may be, of any building or buildings damaged or destroyed by fire, flood, windstorm, or other casualty for which insurance money shall be payable and shall be paid out by the Landlord and the Tenant from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction of such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefor; provided, however, that the total amount of money necessary for the reconstruction or repair of any building or buildings destroyed or injured has been provided by the Tenant for such purpose and its application for such purpose assured. In the event of the destruction or damage of the buildings and improvements or any part thereof, and as often as any building or improvement on said Demised Premises shall be destroyed or damaged by fire, flood, windstorm, or other

casualty, the Tenant shall rebuild and repair the same in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or higher value as the said building or improvement and the personal property upon the Demised Premises prior to such damage or destruction, and shall diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible from the time when the loss or destruction occurred.

9.2 **Commercial General Liability Insurance.** Tenant shall maintain Commercial General Liability Insurance beginning on the Commencement Date and continuing during the entire Term of this Lease. The Commercial General Liability shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability. Such insurance shall have the following minimum limits:

General Aggregate	\$3,000,000
Products/Completed Operations	\$5,000,000
Personal & Advertising Liability	\$500,000
Each Occurrence	\$1,000,000
Contractual Liability	\$5,000,000

The Landlord shall be included as an additional insured for Commercial General Liability.

The policy limits for the comprehensive liability insurance may be reviewed by Landlord every five (5) years and adjusted upward, if, in the reasonable discretion of Landlord, such increase in coverage is prudent or if similar projects have begun to require greater insurance coverage.

9.3 **Other Insurance.** Tenant shall maintain workers compensation insurance and any insurance required by law. In addition, Tenant shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated. In the event the Tenant believes the Landlord's requirement for such additional insurance is unreasonable the reasonableness of Landlord's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the requirement of coverage and the proper and reasonable limits for such insurance then to be carried shall be binding on the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Section. The expenses of such determination shall be borne equally by the parties. This procedure may only be requested on each five (5) year anniversary date of the lease.

9.4 **Delivery of Policies.** On or before the Commencement Date and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this section, the certificates of all such policies of insurance shall be delivered to the Landlord by the Tenant along with the receipted bills evidencing the fact that the premiums



therefore are paid; but nothing herein contained shall be construed as prohibiting the Tenant from financing the premiums.

9.5 **General Requirements.** All insurance to be provided by Tenant under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of recognized financial responsibility qualified to do business in Florida which have an A.M rating of "A" or better. All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that (a) no act or negligence of Tenant or anyone acting for Tenant or for any subtenant or occupant of the Demised Premises which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Landlord; and that (b) such policy of insurance shall not be changed or cancelled without at least thirty (30) days written notice to the Landlord, and that (c) the Landlord shall not be liable for any premiums thereon or subject to any assessments thereunder. The requirement of obtaining insurance as provided herein, shall not be deemed a waiver of sovereign immunity of or by the Landlord.

9.6 **Insurance Premiums.** The Tenant shall pay premiums for all of the insurance policies which the Tenant is obligated to carry under the terms of this Lease, and will deliver to the Landlord evidence of such payment before the payment of any such premiums become in default, and the Tenant will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Landlord at least ten days before the expiration date of such expiring policies.

## **10 - CONDEMNATION**

10.1 **Eminent Domain; Cancellation.** If, at any time during the Term of this Lease, the Demised Premises or the improvement or building or buildings located thereon, or any portion thereof is taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the Landlord and the Tenant are unable to agree upon what division, annual abatement of rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, be determined in accordance with the rules of the American Arbitration Association. Such determination made by the arbitration shall be binding on the parties. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

## **11 - INDEMNIFICATION**

11.1 **Indemnification by Tenant.** To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the Tenant, to the extent of the Landlord's potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the Landlord, its officers, and employees, harmless from

and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Tenant or any third party vendor contracted by the Tenant in connection with this Agreement.

11.2 **Insurance.** On the Commencement Date, the Tenant shall cause to be written and in full force and effect a policy or policies of insurance as described in this Lease, insuring the Tenant against any and all claims and demands made by any person or persons whatsoever for injuries received in connection with the operation and maintenance of the Project, improvements, and buildings located on the Demised Premises. Any loss adjustment shall require the written consent of both the Landlord and Tenant.

## **12 - ENVIRONMENTAL MATTERS**

12.1 **No Warranties.** Landlord makes no representations or warranties of any kind whatsoever regarding the Demised Premises or the environmental condition of the Demised Premises or any improvement thereon.

12.2 **Investigation and Remediation.** The Tenant will be responsible to obtain its own environmental reports or studies as it deems prudent at its own expense. Tenant shall provide a copy of any such reports to Landlord. Tenant shall notify Landlord immediately of any discharge or discovery of any hazardous waste at, upon, under, or within the Demised Premises.

12.3 **Tenant's Compliance.** Tenant shall not cause or permit to occur any of the following:

Any violation of Governmental Regulations related to environmental conditions on, under, or about the Demised Premises or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions, or

The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Demised Premises or the transportation to or from the Demised Premises of any Hazardous Substances.

## **13 - ADDITIONAL COVENANTS**

13.1 **Taxes, Insurance and Utilities.**

13.1.1 Tenant will pay all Taxes and all hazard insurance premiums due and payable during any calendar year of the term. Landlord will prorate Tenant's share of any Taxes and Insurance due and payable during the calendar year in which the Lease commences or terminates on a per diem basis based on the number of days of the term within such calendar year.

13.1.2 Tenant will be responsible for payment of all Utilities consumed on or charged to the Demised Premises during the term of this Lease. The term "Utilities" shall include electricity, water, sewer, solid waste, telephone and other utility charges.

13.1.3 The term "Taxes" shall mean any real estate taxes or assessments attributable to the Demised Premises. Landlord shall deliver to Tenant any real estate tax bill or assessment upon receipt thereof. Taxes shall be paid by Tenant on or prior to due date.

13.1.4 If the Tenant shall fail, refuse, or neglect to make any of the payments required in this Article, then the Landlord may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Tenant to the Landlord, upon the demand of the Landlord, and the payment thereof may be collected or enforced by the Landlord in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Tenant to the Landlord, upon the day when the Landlord demands repayment thereof or reimbursement therefor of and from the Tenant; but the election of the Landlord to pay such taxes shall not waive the default thus committed by the Tenant.

13.2 **Recovery of Litigation Expense.** In the event of any suit, action or proceedings at law or in equity, by either of the Parties hereto against the other by reason of any matter or thing arising out of this Lease, including any eviction proceedings, the prevailing party shall recover not only its legal costs, but reasonable attorneys' fees including appellate, bankruptcy and post-judgment collection proceedings for the maintenance or defense of said action or suit, as the case may be. Any judgment rendered in connection with any litigation arising out of this Lease shall bear interest at the highest rate allowed by law.

13.3 **Condition of the Demised Premises.** Tenant agrees to accept the Demised Premises in its presently existing condition "as is" and with all faults. Tenant acknowledges and agrees that it has determined that the Demised Premises is acceptable for its purposes and hereby certifies same to Landlord. Landlord shall have no responsibility for utilities for the Demised Premises. Tenant, at its sole cost and expense, shall bring or cause to be brought to the Demised Premises adequate connections for water, electrical power, telephone, stormwater and sewage and shall arrange with the appropriate utility companies for furnishing such services with no obligation therefore on the part of Landlord. Tenant acknowledges that the Landlord, and any agent, has made no representations or promises in regard to the Demised Premises except as set forth in this Lease with specificity. Tenant has examined the Demised Premises, the sidewalks and structures adjoining the same, any subsurface conditions, and the present uses and non-uses thereof. The Landlord makes no express warranties and disclaims all implied warranties, including, without limitation, those relating to the environmental condition of the Demised Premises. Tenant accepts the same in the condition in which they now are, without representation or warranty, express or implied, in fact or by law, by the Landlord, and without recourse to the Landlord as to the nature, condition, or usability of the Demised Premises, or the uses to which the Demised Premises may be put. The Landlord shall not be responsible for any latent defect or change of condition in the Demised Premises, and personalty, or of title, and the Rent hereunder shall not

be withheld or diminished on account of any defect in such title or property, any change in the condition thereof, any damage occurring thereto, or the existence with respect thereto of any violations of the laws or regulations of any governmental authority.

13.4 **Right of Entry.** The Landlord and his agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that Landlord shall provide Tenant with five (5) days notice, and such right shall be exercised in such manner as not to interfere with the Tenant or any in the use of the Demised Premises. If the Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the Landlord may enter upon the Demised Premises to make emergency repairs; but if the Landlord exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Tenant from its obligation to keep the Demised Premises in repair and the Tenant shall, upon demand of the Landlord, immediately reimburse the Landlord for the cost and expense of such emergency repairs.

13.5 **No Leasehold Mortgage Permitted.** Tenant shall have no right to encumber, by mortgage or other proper instrument, Tenant's interest under this Lease.

#### **14 - DEFAULT**

14.1 **Event of Default.** The occurrence of any of the following events, acts, or circumstances shall constitute an "Event of Default":

14.1.1 Failure by Tenant to make any payment required hereunder when due or to perform any other obligation or duty required of Tenant pursuant to this Lease.

14.1.2 The bankruptcy of, or appointment of a receiver or trustee for, Tenant. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §352, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF ITS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM THE AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE

LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

THIS CLAUSE WAS A MATERIAL CONSIDERATION TO THE LANDLORD TO GIVE THIS LEASE, AND HAD THE TENANT NOT AGREED TO THIS PROVISION, THE LANDLORD WOULD NOT HAVE ENTERED INTO THIS LEASE.

14.1.3 Tenant's voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, or insolvency law.

14.1.4 The sale of Tenant's interest under this Lease by execution or other legal process.

14.1.5 Tenant's making an assignment of a material portion of its assets for the benefit of creditors.

14.1.6 Tenant's dissolution or liquidation.

14.1.6 Failure of Tenant to comply with any of its material obligations to the Landlord as provided for herein such action shall constitute a default under this Agreement.

14.2 **Notice and Cure Periods.** Tenant shall not be deemed to be in default under this Lease in the payment of rent or the payment of any other moneys as herein required or in the furnishing of any bond or insurance policy when required herein unless Landlord shall first give to Tenant ten (10) days' written notice of such default and Tenant fails to cure such default within such ten (10) days of said notice.

Except as to the provisions or events referred to in the preceding paragraph of this section which refer to monetary and insurance obligations, Tenant shall not be deemed to be in default under this Lease unless Landlord shall first give to Tenant thirty (30) days' written notice of such default, and Tenant fails to cure such default within such thirty (30) day period or, if the default is of such a nature that it cannot be cured within thirty (30) days, Tenant fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

Regardless of the notice and cure periods provided herein, in the event that more rapid action is required to preserve any right or interest of the Landlord in the Demised Premises or other detrimental occurrence (such as, but not limited to, payment of insurance premiums, actions to prevent construction or judgment lien foreclosures or tax sales), then the Landlord is empowered to take such action and to request reimbursement or restoration from the Tenant as appropriate.

All default and grace periods shall be deemed to run concurrently and not consecutively.

14.3 **Remedies.** If any such Event of Default occurs and is not cured after the notice described herein, Landlord may, without further notice, immediately or at any time thereafter do one or more of the following:

(a) Reenter and repossess the Leased Premises and remove any property therein and store the same elsewhere at Tenant's expense without relieving Tenant from any liability or obligation hereunder. Landlord shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, or as otherwise provided by law. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, the balance, if any, to be paid to Tenant.

(b) Relet the Leased Premises or any part thereof for Tenant's account, using commercially reasonable efforts, but without obligation to do so and without relieving Tenant from any liability or obligation hereunder. Any amount received by Landlord from reletting will apply first to all reasonable costs and expenses incurred by Landlord in reletting (including, without limitation, broker's commissions, advertising expenses, cleaning and remodeling expenses).

(c) Bring an action then or thereafter against Tenant to recover the amount of any payment owing by Tenant to Landlord as the same is due, becomes due or accumulates.

(d) Terminate this Lease by giving Tenant written notice thereof, without relieving Tenant from any liability or obligation for payments theretofore becoming due or for present and prospective damages resulting from Tenant's default.

(e) Accelerate the entire amount of Rent due under this Lease for the entire Term of this Lease, which amount shall be immediately due and payable.

**14.4 Default by Landlord.** If Tenant asserts that Landlord has failed to meet its obligations under this Lease, Tenant shall give written notice to Landlord specifying the alleged failure to perform. If Landlord has not begun and pursued with reasonable diligence the cure of any failure of the Landlord to meet its obligations under this Lease within thirty (30) days of receipt of the notice, then Landlord shall be in default but Tenant's remedies are limited to the specific remedies set forth in this Lease. If Landlord's default is caused by factors within Landlord's control and is substantial and continuing and of a nature that prevents Tenant from using the Leased Premises, then Tenant may vacate the Leased Premises and Rent shall abate for the period of such vacation until the default has been cured.

**14.5 Landlord's Right to Perform.** In the event that Tenant by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying the nature of the act or thing to be done or performed, then Landlord may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Demised Premises for such purposes, with notice, if Landlord shall so elect), and Landlord shall not be or be held liable or in any way responsible for any loss, inconvenience, or annoyance resulting to Tenant on account thereof, and Tenant shall repay to Landlord on demand the entire expense thereof, including compensation to the agents and employees of Landlord. Any act or thing done by Landlord pursuant to the provisions of this section shall not be or be

construed as a waiver of any such default by Tenant, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Landlord, hereunder or otherwise. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when the amounts become due as in this Lease provided, shall bear interest from the date they become due until paid at the highest rate allowed by law.

14.6 **Assignment of Rents; Receiver.** Tenant pledges with, and assigns to, the Landlord all of the rents, issues, and profits which might otherwise accrue to the Tenant for the use, enjoyment, and operation of the Demised Premises and, in connection with such pledging of the rents, the Tenant covenants and agrees with the Landlord that if the Landlord, upon the default of the Tenant, elects to file suit to enforce the Lease and protect the Landlord's rights, then the Landlord may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a receiver of all and singular the Demised Premises, the improvements, and buildings located thereon; and, thereupon, it is expressly covenanted and agreed that the court shall, forthwith, appoint a receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to the Landlord and without reference to the adequacy or inadequacy of the value of the property, which is subject to the Landlord's lien, or to the solvency or insolvency of the Tenant and without reference to the commission of waste. Nothing in this Section contained shall be construed as empowering the Landlord to collect rents accruing from the Demised Premises, unless and until the Tenant is in default.

14.7 **Late Fees on Past Due Obligations/ Penalty for Non-Monetary Default.**

(a) **Monetary Obligations.** Landlord shall have the right to charge Tenant a late fee equal to ten (10%) percent of any amount due from Tenant to Landlord, which is not paid when due; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the parties hereto that said late fee is reimbursement to Landlord for collection charges incurred as a result of the overdue rent and/or additional rent. Such late fee shall be in addition to any interest payable by Tenant as set forth in this Lease. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever, Landlord shall be entitled to charge Tenant an administrative fee of Fifty Dollars (\$50.00) for each such instrument in addition to any other charges due under this Lease. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said payment being dishonored. Rent shall be paid to Landlord by electronic means if so requested by Landlord.

(b) **Non-Monetary Obligations.** Landlord shall have the right to charge Tenant a penalty of \$150.00 per day for any violation or failure to perform any of the other conditions, covenants or agreements made by Tenant in this Lease if such violation or failure continues for a period of three (3) business days after written notice thereof to Tenant from Landlord.

If such violation or failure cannot be cured through the use of commercially reasonable efforts within the three (3) business days herein provided, Tenant shall commence to cure such violation or failure within the three (3) business days and diligently pursue such cure to completion within a reasonable time. Furthermore, within the three (3) business days herein

provided, Tenant shall provide Landlord, in writing, a detailed account of its commercially reasonable efforts to cure the violation or failure and the estimated time to fully cure such violation or failure.

**TENANT HEREBY ACKNOWLEDGES AND AGREES IF TENANT FAILS TO RESPOND IN WRITING TO LANDLORD WITHIN THREE (3) BUSINESS DAYS OF LANDLORD'S NOTICE TO TENANT, TENANT WILL BE DEEMED TO HAVE ACKNOWLEDGED THAT TENANT IS IN VIOLATION OR HAS FAILED TO PERFORM THE CONDITION, COVENANT OR AGREEMENT STATED IN THE NOTICE BY LANDLORD AND THAT TENANT WILL PAY THE \$150.00 PER DAY PENALTY FOR ANY VIOLATION WHICH IS NOT CURED WITHIN THE ABOVE MENTIONED THREE (3) BUSINESS DAYS FROM LANDLORD'S WRITTEN NOTICE TO TENANT.**

#### **15 - WAIVER; ACCORD AND SATISFACTION**

15.1 The failure of a Party to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease, or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of that or any right or remedy of such Party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. No waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party or their authorized agent. With respect to Landlord, such waiver shall be effective only upon an appropriate Resolution approved by a majority of the commissioners of the City of Key West.

#### **16 - NOTICES**

16.1 All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be served on the parties at the addresses indicated below:

To Tenant:

Monroe County School Board  
Superintendent of Schools  
241 Trumbo Road  
Key West, Florida 33040  
(305) 293-1400

To Landlord:

City of Key West  
City Manager  
P.O. Box 1409  
Key West, FL 33041  
(305) 809-3881



With a copy to:  
The City Attorney  
P.O. Box 1409  
Key West, FL 33041

Any such notices shall be (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (c) sent by telephone facsimile transmission, in which case notice shall be deemed delivered on the day of transmission of such notice and confirmation of such transmission, or (d) sent by personal delivery, in which case notice shall be deemed delivered on the day of actual delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

### **17- ATTORNEY'S FEES**

17.1 In the event of litigation affecting the rights of either Party under this Lease, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

### **18 - MISCELLANEOUS**

18.1 **Entire Agreement.** This Lease and the exhibits attached hereto all exhibits hereto (all of which are expressly incorporated herein by this reference) constitute the sole and exclusive agreement between the parties with respect to the Demised Premises. No amendment, modification, or revision of this Lease shall be effective unless in writing and executed by Landlord and Tenant. No prior written or prior or contemporaneous oral promises or representations shall be binding. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective Parties in any way touching the subject matter of this instrument which are not expressly contained in this Lease.

18.2 **Severability.** If any term or provision of this Lease or the application thereof to any present or future circumstances, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall be in full force and effect, and only the provision found to be unenforceable shall be stricken from the terms hereof.

18.3 **Force Majeure.** Should a party be unable to perform any of its obligations contained in this Lease due to circumstances beyond its reasonable control, including but not limited to labor disputes; Governmental Regulations; fire or other casualty; acts of the other party or the other party's employees, agents, contractors, subcontractors, or invitees; inability to obtain material or services; strikes; or acts of nature, such party shall not be considered in default under the terms of this Lease, the time for performance by such party of the obligation shall be extended for a period of time equal to the length of the delay caused by such circumstances, and the other party

shall not be excused from the obligation to pay all amounts and charges required under this Lease as the same become due except as otherwise expressly provided herein.

18.4 **Governing Law, Venue.** This Lease shall be construed under the laws of the State of Florida, and the venue for any legal proceeding to enforce or determine the terms and conditions of this Lease shall be in the Circuit Court in and for Monroe County, Florida.

18.5 **Binding Effect.** The terms and conditions of this Lease are binding upon the heirs, successors, and assigns of the parties hereto. The obligations of Tenant hereunder shall be joint and several.

18.6 **Usage.** Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. Titles of articles, paragraphs, and subparagraphs of this Lease are for convenience only and neither limits nor amplifies the provisions of this Lease.

18.7 **No Third Party Rights.** The provisions of this Lease are for the exclusive benefit of Landlord and Tenant, and except for rights expressly granted to third parties by the terms hereof, no third party shall have any right or claim against Landlord or Tenant by reason of such provisions or be entitled to enforce any of such provisions against Landlord or Tenant. This Lease creates a landlord/tenant relationship, and no other relationship, between the parties.

18.8 **Time of the Essence.** Time is of the essence in the performance of the obligations of the Parties hereto.

18.9 **Preamble.** Tenant represents and warrants to Landlord that the statements set forth in the Preamble to this Lease are true and correct, and the Parties agree that all such statements are incorporated herein.

18.10 **Waiver of a Jury Trial.** EXCEPT AS PROHIBITED BY LAW, LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF LANDLORD, TENANT OR ANY GUARANTOR. THIS WAIVER IS A MATERIAL INDUCEMENT FOR LANDLORD TO ENTER INTO THIS LEASE. IF THE SUBJECT MATTER OF ANY LITIGATION IS ONE IN THAT THE WAIVER OF JURY TRIAL IS PROHIBITED, NEITHER LANDLORD NOR TENANT SHALL PRESENT AS A NON-COMPULSORY COUNTERCLAIM IN SUCH LITIGATION ANY CLAIM ARISING OUT OF THIS LEASE. FURTHERMORE, NEITHER LANDLORD NOR TENANT SHALL SEEK TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY LITIGATION IN WHICH A JURY TRIAL CANNOT BE WAIVED.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above mentioned.

**Two Witnesses:**

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

**Landlord:**

CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Tenant:**

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

THE SCHOOL BOARD OF MONROE COUNTY,  
FLORIDA

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ (state) driver's license or \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ (state) driver's license or \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)